

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 81.

EMILIE SAXLEHNER, PETITIONER,

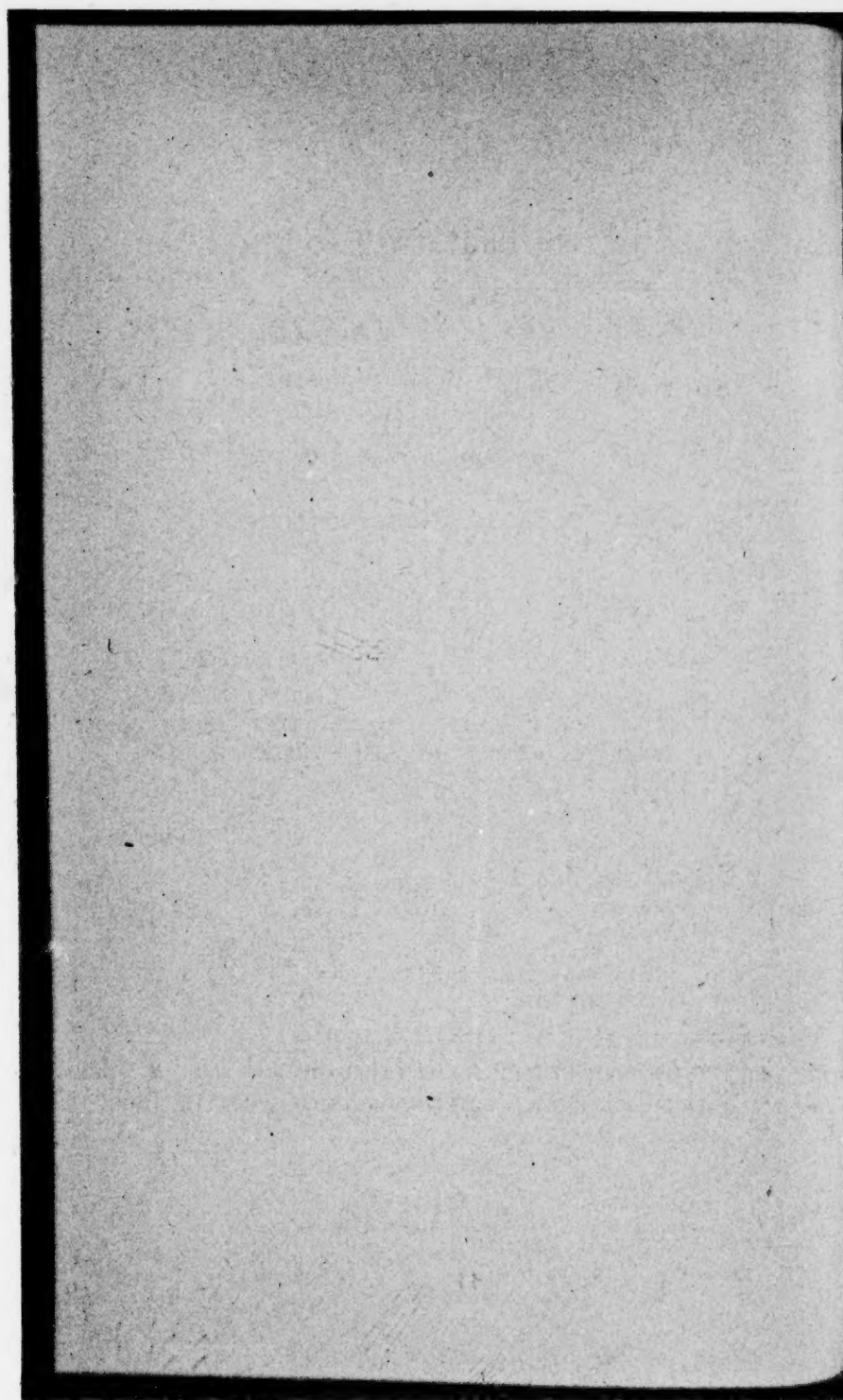
vs.

**EDWARD WAGNER, WILLIAM WAGNER, AND
SOPHIA WAGNER.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT.**

**PETITION FOR CERTIORARI FILED FEBRUARY 20, 1908.
CERTIORARI AND RETURN FILED APRIL 15, 1908.**

(21,035.)



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No. 1682.

United States Circuit Court of Appeals, Sixth Circuit.

EMILIE SAXLEHNER, Appellant,

*vs.*EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Appellees.Appeal from the Circuit Court of the United States for the Western
Division of the Southern District of Ohio.*Record.*

Original Transcript Filed April 13, 1907.

1 Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity.

EMILIE SAXLEHNER, Complainant,

*vs.*EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.To the Honorable the Judges of the Circuit Court of the United
States for the Southern District of Ohio, Western Division:

Emilie Saxlehner brings this bill of complaint against Edward Wagner, William Wagner and Sophia Wagner, and thereupon your orator complains and says, upon information and belief:

First. That your orator is the widow of Andreas Saxlehner, deceased, and resides at the City of Budapest, in the Kingdom of Hungary, and is a subject of the King of Hungary.

Second. That the defendants, the said Edward Wagner, William Wagner and Sophia Wagner, during the times when the acts herein-after complained of were committed, were and now are copartners in business, doing business in the city of Cincinnati, in the State of Ohio, together doing business under the firm name and style of W. T. Wagner's Sons, and severally are citizens of said State of Ohio and reside at the city of Cincinnati in said State.

Third. That the said Andreas Saxlehner, late of the City of Budapest, in the Kingdom of Hungary, was at all times herein mentioned, until the 24th day of May, 1889, the proprietor of a certain well
situated at Orsod, within the city limits of the city of Buda
2 (otherwise known in the German language as the city of
Ofen), which city has for about twenty-five years last past
been and is now united with the city of Pesth, under the name of

Budapest, in said Kingdom of Hungary, the water of which well possessed valuable medicinal properties.

Fourth. That long previous to the year 1870 said Andreas Saxlehner commenced to bottle the waters of said well and to sell the same in the market, and for the purpose of distinguishing his said bitter waters from other bitter waters then known and sold in the market, adopted the arbitrary and fanciful name or trademark of "Hunyadi Janos" for his said bitter waters.

Fifth. That by reason of the great care exercised by him in the business of obtaining, caring for and bottling said waters and selling the same in the market, and the valuable properties of said water, said business soon increased and additional territory was thereafter acquired by said Andreas Saxlehner in which new wells, all giving forth the same water, were opened by him, all being situated near said first mentioned well, and in a valley surrounded by considerable hills, and thereupon said Andreas Saxlehner applied said name of "Hunyadi Janos" to the bottled water of said springs sold by him in the market.

Sixth. That said name "Hunyadi Janos" is in no way descriptive of the nature or quality of the water of the said well or wells, but was adopted by the said proprietor as a fancy or ideal name and as a trademark to distinguish the water of his said wells in commerce from all other waters.

Seventh. That soon after said business of bottling and exporting said Hunyadi Janos water had been commenced by said Andreas Saxlehner, said water bottled, named and labeled with the name

3 "Hunyadi Janos" became popular and was exported to and sold in all the principal countries of Europe, and since about the year 1870 also in the United States of America, and has thenceforth been exported from Hungary to this country and here sold continuously in large quantities.

Eighth. That on May 24, 1889, said Andreas Saxlehner died and your orator, his widow, thereupon succeeded him in said business of bottling and exporting said "Hunyadi Janos" water, and became and is the proprietor thereof, and ever since the year 1889 has continuously exported large quantities of such water to this country; that until the spring of the year 1896 said water was sold here by a sole consignee of complainant, and since the spring of 1896 has been sold continuously by herself and her agents. That your orator is the sole proprietor of the firm of Andreas Saxlehner and lawfully doing business in Austria, Hungary, under said firm name, and is now the sole owner of the name or trademark "Hunyadi Janos" as applied to bitter waters and of the establishment at Budapest from which said bitter waters emanate.

Ninth. That by reason of said sales by your orator and her predecessor in business, the said name "Hunyadi Janos" applied to bottles of bitter water has come generally to be known and recognized as denoting that said bitter waters come from your orator's establishment, and dealers in mineral waters and the purchasers and consumers of said water generally have come to know and have long known your orator's mineral water under said name "Hunyadi

Janos," and that the water so furnished and sold by your orator in said United States is procured directly from the well or wells aforesaid, and therefore to rely upon said trademark as an assurance and guarantee of the genuineness, strength and purity of said water, and your orator alleges that said assurance and guarantee was and

4 is of great value to your orator and to the dealers and consumers of said water.

Tenth. And your orator further shows unto your Honors that the defendants above named, well knowing the premises and the rights existing in and secured to your orator as aforesaid, but contriving to injure your orator and deprive her of the benefits and advantages which might and otherwise would accrue unto her from the enjoyment of such rights and to injure and impose upon the public, subsequent to the adoption of the said trademark by your orator and her predecessor, recently and before the commencement of this suit, in the city of Cincinnati, Ohio, and elsewhere, without license or allowance and against the will of your orator, in violation of the rights of your orator, and infringing the said trademark, did jointly and severally unlawfully and wrongfully put up for sale and sell and offer for sale bitter water not coming from your orator's said wells in bottles bearing the name "Hunyadi Janos," in close and fraudulent simulation of your orator's trademark; and that said defendants by means of price lists and otherwise have offered to the public, and are still offering to the public, an artificial bitter water made by themselves or under their direction as and for your orator's "Hunyadi Janos" water, adding thereto the false and fraudulent description "Ofen Bitter Water," and offering the same for sale to the public at a price greatly lower than that charged and paid for your orator's said bitter water.

Eleventh. And your orator further says by reason of said wrongful acts of said defendants, the public and consumers and purchasers are likely to be deceived and are in fact deceived to suppose the water so sold by said defendants to be that sold by your orator and thereby to cause your orator great loss and damage and have caused your

5 orator great loss and damage thereby. But to what extent is as yet unknown to your orator and can only be ascertained by an accounting. That your orator has duly notified said defendants of her rights and claims in the premises and requested them to desist from such further sales, but said defendants have refused and still refuse so to do. That your orator first discovered the wrongful use of your orator's said trademark by said defendants in the summer of the year 1898 and at once notified said defendants of her rights in the premises and demanded a discontinuance of such use. That your orator at said time and until the month of October, 1900, was occupied with several large and expensive litigations in this country brought by her to protect her rights in her trademarks and labels used upon said "Hunyadi Janos" bitter water, and was unable to prosecute all infringers thereof by separate litigations; that in the month of October, 1900, the Supreme Court of the United States finally decided most of said litigations so that your orator's rights

in the premises are now clear, and that she has never failed to protest against said defendants' sales in the mean time.

Twelfth. That the value of the matter in dispute between your orator and the defendants, exclusive of interest and costs, exceeds the sum of two thousand dollars.

Thirteenth. That by reason of the said acts done or threatened and intended to be done by said defendants, all in defiance of the rights of your orator as aforesaid, great and irreparable loss and injury has been, is and will be caused to your orator, and she has been and is and will be deprived of great gains, profits and advantages which might and otherwise would be obtained and enjoyed; and your orator is informed and believes that said defendants by reason of the said sales by them of the said water complained of (under the name "Hunyadi Janos"), have made and realized

6 large profits and advantages and now have in their possession or under their control or subject to their order, a large quantity of said water so bottled, which they propose to sell, but to what extent said sales have been made and how large profits have been derived therefrom your orator does not know and prays a discovery thereof. And your orator further says that such sales made by said defendants and the threats and intention of defendants to make such further sales and said unlawful acts in disregard and defiance of the rights of your orator have the effect to and do encourage and induce others to interfere with the said trademark and to violate and disregard your orator's rights.

And forasmuch as your orator can have no adequate relief except in this Court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may according to their best and utmost knowledge, remembrance, information and belief, full, true, direct and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of such matters, and to each of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are required to answer:

1st. Whether before the commencement of this suit and since June, 1898, said defendants have put up for sale and sold any water not coming from the wells of the orator in bottles bearing the labels of which the annexed label is a copy, marked "Exhibit A."

2nd. Whether, since said date, said defendants have published and distributed to customers or the public any price lists, of which the attached price list marked "Exhibit B" is a copy.

And may be compelled to account for and pay to your orator the proceeds by them acquired and the damages suffered by your orator from the aforesaid unlawful acts.

But an answer under oath is hereby expressly waived.

Your orator prays that the said defendants, their servants, agents, attorneys and workmen and each and every of them may be restrained and enjoined provisionally and permanently by the order and injunction of this Honorable Court from putting up, parting

with, selling or attempting to sell within the United States of America, any water not coming from the said wells of your orator under the name "Hunyadi Janos," or under any other name so similar thereto as to be calculated to deceive.

And your orator also prays that the defendants may be decreed to deliver up unto your orator or to this Honorable Court any and all labels in their possession upon which the words "Hunyadi Janos" appear, and any and all bottles, whether filled or unfilled, bearing such labels, and to pay unto your orator all profits derived by said defendants from the sale of any imitated water under said name "Hunyadi Janos," or any name or designation so similar thereto as to be calculated to deceive; and that your orator may have such further relief or such other or different relief as to this Honorable Court shall seem meet and as shall be agreeable to equity.

May it please your Honors to grant unto your orator the writ of injunction, as well provisional as permanent, issuing out of and under the seal of this Honorable Court, commanding, enjoining and restraining the said defendants, their servants, agents, attorneys and workmen, and each and every of them as is hereinbefore in that behalf prayed.

May it please your Honors to grant unto your orator the writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the said defendants Edward Wagner, William Wagner and Sophia Wagner, by a certain day and under a certain penalty to be and appear in this Honorable Court, there and then to answer the premises and to stand to and abide such order and decree as may be made against them.

And your orator will ever pray, etc.

NOTE.—The defendants are hereby required to answer specifically the foregoing interrogatories marked 1 and 2.

BRIESEN & KNAUTH,

Complainant's Solicitors.

ANTONIO KNAUTH,

Of Counsel.

9 SOUTHERN DISTRICT OF NEW YORK.

State of New York, County of New York, ss:

Kalman Saxlehner, being duly sworn, deposes and says: That he resides in the city of New York; that he is the resident agent in the United States of the complainant in the above entitled suit; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his knowledge, except as to the matters therein stated on information and belief, and that as to those he believes it to be true; that the reason why this affidavit is not made by the complainant is that she is not within the United States, but is in the Kingdom of Hungary.

KALMAN SAXLEHNER.

Sworn to before me this 20th day of November, 1900.

[SEAL.]

OTTO V. SCHRENK,

Notary Public, N. Y. County.

W. T. Wagner's Sons

Artificial

Hunyadi Janos.

Ofen Bitter Water.

Highly Aerated.

A safe, gentle and reliable aperient and saline laxative, causing no colic nor irritation of the intestines.

The presence of Carbonic Acid Gas in our water improves its taste, which, in the natural water, is most disagreeable and nauseating, while at the same time it adds to its digestibility and action. The dose for a purgative should be limited from a tablespoonful for Children to a wineglassful for Adults.

Analysis by Fresenius, 1878, 100.00 parts contain:

Sodium Chloride,	142.41	Potassium Sulphate, . . .	13.29
Sodium Sulphate,	1966.21	Calcium Sulphate,	13.79
Magnesium Sulphate, . .	1949.42	Ferrous Bicarbonate, . . .	0.28
Calcium Bicarbonate, . .	125.37	Silica,	1.12

Each pint of 16 fluid ounces contains a total of 307.56 grs. of mineral ingredients in above proportions.

Prepared from our Diamond Distilled Water

By W. T. Wagner's Sons,

1926 Race Street,

Cincinnati, O.

10

"EXHIBIT A."

EXHIBIT B.

5-21-98. M. B.

Telephone 1602.

Wholesale Price List,

W. T. Wagner's Sons,

Diamond Mineral Spring and Table Waters,

1926 Race Street, Cincinnati.

Selters, in siphons, per case of six,	\$0.60
Carbonic, in siphons,60
Club Soda, in siphons,60
Vichy, in siphons,60
Lithia, in siphons,60
Quadruple Carlsbad with Lithia, in siphons,	1.00
Quadruple Carlsbad with Lithia and Soda, in siphons,	1.25

Siphons with case must be returned within thirty days.

Reichsquelle, Imperial and Carbonic in quarts, per dozen	1.35
Reichsquelle, Imperial and Carbonic, in quarts, per case of 50	5.00
Selters and Ems (Kräuchen), in quarts, per dozen	1.70
Selters and Ems (Kräuchen), in quarts, per case of 50	6.50
Kissingen (Pandur) and Carlsbad, in quarts, per dozen	1.70
Kissingen (Pandur) and Carlsbad, in quarts, per case of 50	6.50
Carlsbad, Double Carlsbad, and Vichy, in quarts, per dozen	1.70
Carlsbad, Double Carlsbad, and Vichy, in quarts, per case of 50	6.50
Lithia and Wildungen (Helenenquelle), in quarts, per dozen	1.70
Lithia and Wildungen (Helenenquelle), in quarts, per case of 50	6.50
11 Quadruple Carlsbad, in quarts, per dozen	2.50

Empties returnable—Cases, with bottles, \$1.50; bottles, per dozen, 25c.; boxes, 25c.

Ems (Kräuchen), in pints, per dozen	1.20
Carlsbad, in pints, per dozen	1.20
Double Carlsbad, in pints, per dozen	1.20
Quadruple Carlsbad, in pints, per dozen	1.20
Vichy, with Lithia, in pints, per dozen	1.20
Lithia, in pints, per dozen	1.20
Kissingen (Pandur), in pints, per dozen	1.20
Saratoga, in pints, per dozen	1.20
Kissingen Bitter Water, in pints, per dozen	1.20
Pullna Bitter Water, in pints, per dozen	1.20
Hunyadi Janos (Ofen Bitter Water), in pints, per dozen	1.20
Rubinat (Condal Spring), in pints, per dozen	1.20
Wildungen (Helenenquelle), in pints, per dozen	1.20
Pyrophosphated Iron Water, in pints, per dozen	1.20
Pyrophosphated Iron Water, Arseniated, in pints, per dozen	1.20
Selters, in pints, per dozen	1.20
Reichsquelle, in pints, per dozen	.85
Imperial, in pints, per dozen	.85
Club Soda (Egg Shape), in pints, per dozen	.75

Allowance for Empties.—Per dozen, 20 cents; Apollinaris and Egg Shape, per dozen, 15 cents.

Still Lithia, in half-gallons, six in case, per case, \$1.50

Allowance for Empties, per dozen, 60 cents.

Diamond Distilled Water, in half-gallons, six in case, per case, .30

A charge of \$1.50 for case and bottles will be made, and money refunded when returned.

Sept. 1, 1897.

12 Circuit Court of the United States, Southern District of Ohio, Western Division.

No. 5498. In Equity.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of Ohio, Western Division:

Emilie Saxlehner brings this amended bill of complaint against Edward Wagner, William Wagner and Sophia Wagner, and thereupon your orator complains and says, by way of amendment to her original bill, to be added thereto and inserted therein as a part of paragraph 10 thereof, and at the end of said paragraph in continuation thereof (all the other allegations and matter, and the interrogatories and prayer of said bill to apply thereto as if the same had been from the first a part of said original bill), as follows upon information and belief:

10th. (In continuation thereof as aforesaid.) And that said defendants also have offered to the public and are still offering to the public an artificial bitter water not coming from your orator's Hunyadi Janos establishment, nor having any connection therewith, under the name "W. T. Wagner's Sons' Carbonated Artificial Hunyadi, conforming to Fresenius' Analysis of the Hunyadi Janos Springs," and are thereby falsely and wrongfully stating to the

public that their said artificial product is the same as complainant's, whereas, in fact, said product is not the same nor similar to complainant's said Hunyadi Janos water, and are thereby causing injury and damage to the reputation of your orator's said product.

Your orator prays with reference to the new matter herein set forth as in her original bill, except for writ of subpoena, the defendant's appearances having been already entered.

And your orator will ever pray, etc.

BRIESEN & KNAUTH,
MORTIMER MATTHEWS,

Complainant's Solicitors,

ANTONIO KNAUTH,
MORTIMER MATTHEWS,

Of Counsel,

STATE OF OHIO.

Hamilton County, ss.:

Mortimer Matthews, being first duly sworn, deposes and says: That he resides in said County of Hamilton; and that he is one of the solicitors of the complainant in the above entitled suit; that he has read the foregoing amended bill of complaint, and knows the

contents thereof, and that the same is true to his knowledge, except as to matters stated therein on information and belief, and that as to those he believes it to be true; that the reason why this affidavit is not made by the complainant is that she is not within the United States, but is in the Kingdom of Hungary.

MORTIMER MATTHEWS.

Sworn to before me and subscribed in my presence this 14th day of January, 1901.

[NOTARIAL SEAL.]

C. HAMMOND AVERY,

Notary Public in and for Hamilton County, Ohio.

40 cents paid by Complainant.

14 *Amended Bill of Complaint.*

United States Circuit Court, Southern District of Ohio, Western Division.

In Equity.

EMILIE SAXLEHNER, Complainant.

vs.

EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAGNER,
Defendants.

To the Honorable The Judges of the Circuit Court of the United States for the Southern District of Ohio, Western Division:

Emilie Saxlehner brings this amended bill of complaint against Edward Wagner, William Wagner and Sophia Wagner, and thereupon your orator complains and says, upon information and belief:

First. That your orator is the widow of Andreas Saxlehner, deceased, and resides at the City of Budapest, in the Kingdom of Hungary, and is a subject of the King of Hungary.

Second. That the defendants, the said Edward Wagner, William Wagner and Sophia Wagner, during the times when the acts herein-after complained of were committed, were and now are co-partners in business, doing business in the City of Cincinnati, in the State of Ohio, together doing business under the firm name and style of W. T. Wagner's Sons and severally are citizens of said State of Ohio and reside at the City of Cincinnati, in said State.

15 Third. That the said Andreas Saxlehner, late of the City of Budapest, in the Kingdom of Hungary, was at all times herein mentioned, until the 24th day of May, 1899, the proprietor of a certain well situated at Orsod, within the city limits of the city of Buda (otherwise known in the German language as the City of Ofen), which city has for about twenty-five years last past been and is now united with the City of Pest, under the name of Budapest, in said Kingdom of Hungary, the water of which well possessed valuable medicinal properties.

Fourth. That long previous to the year 1870, said Andreas Sax-

lehner commenced to bottle the waters of said well and to sell the same in the market, and for the purpose of distinguishing his said bitter waters from other bitter waters then known and sold in the market, adopted the arbitrary and fanciful name or trademark of "Hunyadi Janos" for his said bitter waters.

Fifth. That by reason of the great care exercised by him in the business of obtaining, caring for and bottling said waters and selling the same in the market, and the valuable properties of said water, said business soon increased and additional territory was thereafter acquired by said Andreas Saxlehner, in which new wells, all giving forth the same water, were opened by him, all being situated near said first mentioned well, and in a valley surrounded by considerable hills, and thereupon said Andreas Saxlehner applied said name of "Hunyadi Janos" to the bottled water of said springs sold by him in the market.

Sixth. That said name "Hunyadi Janos" is in no way descriptive of the nature or quality of the water of the said well or wells, but was adopted by the said proprietor as a fancy or ideal name and as a trademark to distinguish the water of his said wells in commerce from all other waters.

Seventh. That soon after said business of bottling and exporting said Hunyadi Janos water had been commenced by said Andreas Saxlehner, said water bottled, named and labelled with the name "Hunyadi Janos," became popular and was exported to and sold in all the principal countries of Europe, and, since about the year 1870, also in the United States of America, and has thenceforth been exported from Hungary to this country and here sold continuously in large quantities.

That soon after said water was exported to the United States of America and sold therein it became commonly known by the short name "Hunyadi" and continued to be known in common parlance by that short name until the present time.

Eighth. That on May 24th, 1889, said Andreas Saxlehner died, and your orator, his widow, thereupon succeeded him in said business of bottling and exporting said "Hunyadi Janos" water, and became and is the proprietor thereof and ever since the year 1889 has continuously exported large quantities of such water to this country; that until the spring of the year 1896, said water was sold here by a sole consignee of complainant, and since the spring of 1896 has been sold continuously by herself and her agents. That your orator is the sole proprietor of the firm of Andreas Saxlehner and lawfully doing business in Austria, Hungary, under said firm name, and is now the sole owner of the name or trademark "Hunyadi Janos" as applied to bitter waters and of the establishment at Budapest from which said bitter waters emanate.

Ninth. That by reason of said sales of your orator and her predecessor in business the said name "Hunyadi Janos" applied to bottles of a bitter water has come to be generally known and recognized as denoting that said bitter waters come from your orator's establishment, and dealers in mineral waters and the purchasers and consumers of said water generally have come to know and have long known your orator's mineral water under the said

name "Hunyadi Janos" and the short abbreviation thereof "Hunyadi" or "Hunyadi Water," and that the water so furnished and sold by your orator in said United States is procured directly from the well or wells aforesaid, and therefore to rely upon said trademark as an assurance and guarantee of the origin, genuineness, strength and purity of the said water, and your orator alleges that said assurance and guarantee was and is of great value to your orator and to the dealers and consumers of said water.

That about the year 1886 and thereafter, certain other natural bitter waters coming from springs or wells situated at or near Budapest, in Hungary, and from other parts of Hungary, were exported to this country by the owners of said other springs and here sold in bottles and under labels similar in appearance to those used by your orator for her Hunyadi Janos water and in fraudulent simulation thereof; that by reason of a lack of sufficient protection in Hungary, your orator and her predecessor in business were unable to prevent the exportation of said fraudulent competing waters, which were named by the owners of said springs by several names adopted in more or less imitation of your orator's name Hunyadi Janos, namely such as "Hunyadi Matyas," "Hunyadi Lajos," "Hunyadi Arpad," in every instance employing the name "Hunyadi" as a part of the

18 the name for the purpose of fraudulently reaping the benefits of the great reputation which complainant's predecessor had built up for the Hunyadi Janos water. That these several competing fraudulent waters were of more or less different character and composition than your orator's Hunyadi Janos water. That the names adopted for them as aforesaid were adopted under sanction of the then existing laws and authorities in Hungary and your orator was unable to prevent the use of said names upon said competing waters until 1896, when as the result of litigations had by your orator against the owners of said competing springs, the use of said fraudulent names was forbidden in Hungary. That your orator thereupon litigated her rights in this country against the parties selling said competing natural bitter waters, but owing to the long time which had elapsed your orator was unable to enforce against them her exclusive claims and rights in and to the short name "Hunyadi" as a trademark for her bitter water. That the Court found upon the proofs of said litigation "that these Hungarian bitter waters were largely known in this country as "Hunyadi Waters," and that in a certain sense Hunyadi had become a generic word for them."

That your orator still has and claims an exclusive right to the name "Hunyadi" for her natural bitter water in common with the owners of other springs of bitter water in Hungary, who heretofore used the said name "Hunyadi" in connection with some other suffix as a name for such bitter water under sanction of the Hungarian laws and authorities and who exported the said waters to the United States and sold them here under said names employing "Hunyadi" as a part thereof.

19 Tenth. That your orator has at all times been active and solicitous in suppressing all other kinds of fraudulent imitations of her trademark "Hunyadi Janos" and the short form

thereof "Hunyadi" and has protested at all times against the use of said names and each of them upon any substances, mineral waters, salts or chemical preparations, not coming from your orator's establishment, which were sold or offered to the public under the name of "Hunyadi Janos" or "Hunyadi" for the purpose of making the public believe that they emanated from your orator's establishment or were the same or similar to those sold by your orator.

Eleventh. And your orator further shows unto your Honors that the defendants above named, well knowing the premises and the rights existing in and secured to your orator as aforesaid, but contriving to injure your orator and deprive her of the benefits and advantages which might and otherwise would accrue unto her from the enjoyment of such rights and to injure and impose upon the public, subsequent to the adoption of the said trademark by your orator and her predecessor, recently and before the commencement of this suit, in the City of Cincinnati, Ohio, and elsewhere, without license or allowance and against the will of your orator, in violation of the rights of your orator, and infringing the said trademark, did jointly and severally unlawfully and wrongfully put up for sale and sell and offer for sale bitter waters not coming from your orator's said wells in bottles bearing the name "Hunyadi Janos," in close and fraudulent simulation of your orator's trademark; and that said defendants by means of price lists and otherwise, have offered to the public and are still offering to the public an artificial bitter water made by themselves or under their direction as and for your orator's "Hunyadi Janos" water, adding thereto the false and fraudulent description "Ofen Bitter Water," and offering the same for sale to the public at a price greatly lower than that charged and paid for your orator's said bitter water.

And the defendants in further violation of the rights of your orator and for the purpose of deceiving the consumers and purchasers have wrongfully and fraudulently offered to the public and are still offering to the public an artificial bitter water not coming from your orator's Hunyadi Janos establishment nor having any connection therewith or with any natural Hungarian bitter water under the name "W. T. Wagner's Sons Carbonated Artificial Hunyadi, conforming to Fresenius' Analysis of the Hunyadi Janos Springs," and are thereby falsely and wrongfully stating to the public that their said artificial product is the same as complainant's or is complainant's product, artificially carbonated, whereas in fact said product is not the same or similar to your orator's product and has no connection with the same whatever, and are thereby causing injury and damage to the reputation of your orator's said product and damage to your orator's business.

And that the defendants have further wrongfully and fraudulently advertised their said manufactured artificial water by printing upon the siphons or bottles containing the same the word or name "Hunyadi" in large and prominent characters and have printed the words accompanying the same in such small and indistinct print that ordinary purchasers will read and see only the name "Hunyadi." That they have further employed the term "Wagner's Hunyadi" in public

advertisements and signs, without stating that said water is not that of your orator or of any other Hungarian springs above named, and have in other manners and ways, in their advertisements, catalogues, price lists and stationery, and by word of mouth, used the

21 name "Hunyadi" as a name for their artificial preparation, with the fraudulent intent and in such manner as to make the public and consumers thereof believe that said defendants are selling complainant's product or some other natural Hungarian bitter water, as above described, or that their product is the same as that of your orator.

Twelfth. And your orator further says by reason of said wrongful acts of said defendants, the public and consumers and purchasers are likely to be deceived and are in fact deceived to suppose the water so sold by said defendants to be that sold by your orator and thereby to cause your orator great loss and damage and have caused your orator great loss and damage thereby. But to what extent is as yet unknown to your orator and can only be ascertained by an accounting. That your orator has duly notified said defendants of her rights and claims in the premises and requested them to desist from such further sales, but said defendants have refused and still refuse so to do. That your orator first discovered the wrongful use of your orator's said trademark by said defendants in the summer of the year 1898 and at once notified the defendants of her rights in the premises and demanded a discontinuance of such use. That your orator at said time and until the months of October, 1900, was occupied with several large and expensive litigations in this country brought by her to protect her rights in her trademark and labels used upon said "Hunyadi Janos" bitter water and was unable to prosecute all infringers thereof by separate litigations; that in the month of October, 1900, the Supreme Court of the United States finally decided most of said litigations so that your orator's rights in the premises are now clear, and that she has never failed

22 to protest against said defendants' sales in the meantime.

Thirteenth. That the value of the matter in dispute between your orator and the defendants, exclusive of interest and costs, exceeds the sum of Five Thousand Dollars.

Fourteenth. That by reason of the said acts done or threatened and intended to be done by said defendants, all in defiance of the rights of your orator as aforesaid, great and irreparable loss and injury has been, is and will be caused to your orator, and she has been and is and will be deprived of great gains, profits and advantages which might and otherwise would be obtained and enjoyed; and your orator is informed and believes that said defendants by reason of the said sales by them of the said water under the name "Hunyadi Janos" and the name "Hunyadi" have made and realized large profits and advantages and now have in their possession or under their control or subject to their order, a large quantity of water so bottled, which they propose to sell, but to what extent said sales have been made and how large profits have been derived therefrom your orator does not know and prays a discovery thereof. And your orator further says that such sales made by such defendants

and the threats and intentions of defendants to make such further sales and said unlawful acts in disregard and defiance of the rights of your orator have the effect to and do encourage and induce others to interfere with the said trademark and to violate and disregard your orator's rights.

And forasmuch as your orator can have no adequate relief except in this Court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the
23 relief hereby prayed and may according to their best and utmost knowledge, remembrance, information and belief, full, true, direct and perfect answers make to the premises, and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of such matters.

And may be compelled to account for and pay to your orator the profits by them acquired and the damages suffered by your orator from the aforesaid unlawful acts. But an answer under oath is hereby expressly waived.

Your orator prays that the said defendants, their servants, agents, attorneys and workmen and each and every of them may be restrained and enjoined provisionally and permanently by the order and injunction of this Honorable Court from putting up, parting with, selling or attempting to sell within the United States of America any water not coming from the said wells of your orator under the name "Hunyadi Janos" or under the name "Hunyadi" or under any other name so similar thereto as to be calculated to deceive, and from in any manner representing to the public that their artificial water is the bitter water sold by your orator, or in some manner comes from or is connected with that of your orator, or belongs to the same class or groups of bitter waters coming from Hungary.

And your orator also prays that the defendants may be decreed to deliver up unto your orator or to this Honorable Court any and all labels in their possession upon which the words "Hunyadi Janos" or the name "Hunyadi" appear and any and all bottles, whether filled or unfilled, bearing such labels, and to pay unto your orator all profits derived by said defendants from the sale of any imitated water under said name "Hunyadi Janos" or said name "Hunyadi"

or any name or designation so similar thereto as to be calculated to deceive, and that your orator may have such further relief or such other or different relief as to this Honorable Court shall seem meet and as shall be agreeable to equity.
24

May it please your Honors to grant unto your orator the writ of injunction, as well provisional as permanent, issuing out of and under the seal of this Honorable Court, commanding, enjoining and restraining the said defendants, their servants, agents, attorneys and workmen and each and every of them as is hereinbefore in that behalf prayed.

May it please your Honors to grant unto your orator the writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the said defendants Edward Wagner, William Wagner

and Sophia Wagner by a certain day and under a certain penalty to be and appear in this Honorable Court, there and then to answer the premises and to stand to and abide such order and decree as may be made against them.

BRIESEN & KNAUTH,

Complainant's Solicitors,

ANTONIO KNAUTH,

Cf Counsel,

STATE OF NEW YORK,

Southern District of New York, County of New York, ss:

Albin Trojan, being duly sworn, deposes and says that he resides at the City of New York, and is the resident agent in the United States of the complainant in the above entitled suit; that he has read the foregoing amended bill of complaint and knows the contents thereof, and that the same is true of his knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true; that the reason why this affidavit is not made by the complainant is that she resides at Budapest, Hungary, and is not within the United States of America, but is in the Kingdom of Hungary.

ALBIN TROJAN.

Sworn to before me this 3rd day of March, 1902.

EUGENE EBLE,

[SEAL.]

Notary Public, New York County.

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Demurrer and Answer.

Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity. No. 5498.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAGNER,
Defendants.

The Demurrer and Answer of Edward Wagner, William Wagner, and Sophia Wagner, Defendants, to the Amended Bill of Complaint of Emilie Saxlehner, Complainant.

These defendants by protestation, not confessing or acknowledging all or any of the matters or things in the said complainant's amended bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto:

And for cause of demurrer sheweth:

1. That the said complainant has not by the said amended bill made or stated any such cause as doth or ought to entitle her in

this Court to the relief prayed by the amended bill against these defendants.

2. The amended bill is indefinite and uncertain in that (a) The bill filed November 23, 1900, charged infringement of an alleged trade-mark, Hunyadi Janos. (b) The amendment to clause 10 of said bill, filed January 11, 1901, charged infringement of trade-mark, Hunyadi, by selling under the name "W. T. Wagner Sons Carbonated Artificial *Hunyadi*." (c) The amended bill of complaint, filed March 6, 1902, clause 9, admits that all the owners of bitter water springs in Hungary have the right in this country to the use of the word "Hunyadi," but claims exclusive right to name Hunyadi in common with owners of other springs (see last paragraph, clause 9).

Wherefore, and for divers other good causes of demurrer in the said amended bill contained, as to so much of the complainant's said amended bill as is set forth, these defendants do demur, and pray the judgment of this Honorable Court whether they shall be compelled to make any further or other answer to such parts of said amended bill as is so demurred unto as aforesaid.

MURRAY & MURRAY,

Solicitors and Counsel for Defendants.

I hereby certify that in my opinion the foregoing demurrer of Edward Wagner, William Wagner and Sophia Wagner, defendants, to the amended bill of complaint of Emilie Saxlehner is well founded in law and proper to be filed in this cause.

GEO. J. MURRAY,

Of Counsel for Defendants.

STATE OF OHIO,

Hamilton County, ss:

Edward Wagner, being first duly sworn, deposes and says that he is one of the defendants named in the above entitled cause; that he has read the foregoing demurrer to the amended bill of complaint of Emilie Saxlehner, complainant in this suit, and knows the contents thereof; that said demurrer is not interposed for the purpose of delaying said suit or any proceedings therein.

(Signed)

EDWARD WAGNER.

Sworn to before me and subscribed in my presence this 17th day of January, A. D. 1903.

(Signed)

CHAS. M. LESLIE,

[SEAL.]

Notary Public, Hamilton County, Ohio.

And these defendants not waiving their said demurrer, but relying thereon for answer to the charges in the residue of said amended bill contained, saith:

The Joint and Several Answers of Edward Wagner, William Wagner, and Sophia Wagner to the Amended Bill of Complaint.

These defendants now and at all times, saving and reserving unto themselves all benefit and advantage of exceptions which can or may be made to the many errors, uncertainties and other imperfections in the said complainant's amended bill contained for answer thereto, unto so much and such parts thereof as these defendants are advised, is material or necessary for them to make answer unto, answering, saith:

1. They admit on information and belief the allegations contained in the amended bill of complaint from clause 1 to 8 inclusive except the statement in the last paragraph of clause 7, that the complainant's natural bitter water was known by the short term "Hunyadi" up to the present time, which allegation is denied.

2. In answer to interrogatories 1 and 2, these defendants say that as to exhibit A, these labels were first printed and used
29 August 28, 1897, and so used up to May, 1900, when the word Janos was discarded and the words W. T. Wagner Sons Carbonated Artificial Hunyadi, Conforming to the Fresenius' Analysis of the Hunyadi Janos Springs, substituted therefor. The price list, Exhibit B, was used up to May, 1899.

3. These defendants further answering, on information and belief deny that Andreas Saxlehner, or his successor, the complainant herein, ever had any valid trade-mark in the words Hunyadi Janos, either applied to the springs of Andreas Saxlehner, at Budapesth, or to any other Hungarian Bitter Water. Deny that the complainant, or her predecessor, ever had any exclusive right, either in Hungary or this country, to the use of either "Hunyadi" or the word "Janos" as applied to the bitter waters coming from complainant's springs at Budapesth, but on the contrary, the registration of said trade-marks for Hunyadi and for Janos were obtained by fraud, and false statements, in the Patent Office of the United States.

4. And these defendants further answering, on information and belief, allege that long prior to the time Andreas Saxlehner introduced natural bitter water from Hungary into the United States, that artificial Hunyadi Janos and other artificial mineral waters had been manufactured and sold in this country, which use was known to Dr. Enos Sander, who manufactured said water, and who then, and still, resides in the City of St. Louis, and who continued to manufacture, advertise and sell artificial Hunyadi up to a recent date. Artificial Mineral Water was also used by Carl Schultz, now deceased, who had,
30 as early as 1861, put up and sold artificial mineral waters in the City of New York, and publicly as early as 1867 in the Drink Halle, Central Park, New York City.

5. These defendants further answering on information and belief, allege that long prior to the time Andreas Saxlehner introduced his Natural Hunyadi Water into this country and up to the present time, artificial Hunyadi Janos and artificial Hunyadi were manufactured in large quantities and sold in Hungary, Germany and other

foreign countries, and are still so sold, of which facts Andreas Saxlehner and the complainant herein had full knowledge.

6. And these defendants further answering on information and belief, say that on all of the labels and printed matter used by the complainant and by Andreas Saxlehner, either in this country or in Hungary, the word "Natural" is used as a prefix before the word Hunyadi, or Hunyadi Janos, which distinguished the waters of the complainant and her predecessor from the artificial bitter waters theretofore manufactured and put upon the market in this and foreign countries, and the word Janos as a suffix was also used upon all the natural bitter waters coming from complainant's spring in Hungary, which distinguished them from the other natural bitter waters of Hungary, which were marked with a different prefix and suffix from Janos.

And these defendants denying that they have in any manner infringed upon any rights of the complainant as charged in said amended bill of complaint, and denying that complainant has any right to further answer to said amended bill of complaint herein, and denying that the plaintiff is entitled to any injunction, account,

damages, or any other relief whatsoever, without this, that any
31 other matter, cause or thing in said complainant's amended

bill of complaint contained material or necessary to make answer unto and not hereby well and sufficiently answered, confessed, traversed and avoided or denied is true, to the knowledge or belief of these defendants, submits for the reason hereinbefore recited and set forth, that the complainant is not entitled to any relief whatsoever against these defendants.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and, therefore, pray to be hence dismissed with their reasonable costs and charges in this behalf, most wrongfully sustained.

(Signed)

EDWARD WAGNER.

MURRAY & MURRAY,

Solicitors and Counsel for Defendants.

STATE OF OHIO,

County of Hamilton, ss:

Edward Wagner, being duly sworn, deposes and says that he is one of the defendants above named in the foregoing answer; that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to these matters, he believes them to be true.

(Signed)

EDWARD WAGNER.

Sworn to before me, and subscribed in my presence, this 17th day of January, A. D., 1903.

(Signed)

CHAS. W. LESLIE,

[SEAL.]

Notary Public, Hamilton County, Ohio.

Opinion Overruling Demurrer.

United States Circuit Court, Southern District of Ohio, Western Division.

No. 5498.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

Ruling of Judge THOMPSON:

An amended bill was filed in this case March 6th, 1902, and exceptions thereto were filed by the defendants. Afterwards the defendants asked leave to withdraw the exceptions and file a demurrer to part and an answer to the residue of the amended bill. Neither the motion for leave to withdraw the exceptions nor the demurrer and answer are marked filed. I am not certain whether the case was submitted upon leave to withdraw the exceptions and file the demurrer and answer, or whether that leave was given and the submission was upon the demurrer and answer. There are no entries upon the Journal showing the filing or the granting of the motion for leave to withdraw the exceptions, or leave to file a demurrer and answer. But leave will now be given to withdraw the exceptions and to file the demurrer and answer, and the demurrer will be overruled.

A general demurrer was filed to the original bill and the case was heard upon that demurrer and upon the motion of the complainant for a preliminary injunction. The court was of the opinion that the demurrer was not well taken because the bill made a case for the in-

fringement of a trade-mark and overruled the demurrer and
33 granted a preliminary injunction prohibiting the defendants
from using the trade-mark "Hunyadi Janos." The original
bill also sought to make a case against the defendants for unfair competition for so dressing and advertising their goods as to deceive intending purchasers and induce them to buy their goods in the belief that they were buying the goods of the complainant. But the court was of the opinion that the original bill failed to make a case justifying the allowance of a preliminary injunction upon that ground. The purpose of the amended bill is to strengthen the case in this respect, and while yet not sufficient, in the opinion of the court, to justify the allowance of a preliminary injunction, yet is not open to the objection made by the special demurrer that it is indefinite and uncertain. If the defendants desire they may have leave to withdraw their present partial answer and file an amended answer covering the case presented by the amended bill.

SOUTHERN DISTRICT OF OHIO, ss.:

A true and correct copy of the original on file in this office.

Attest:

B. R. COWEN, *Clerk*,

By ROBT C. GEORGE, *Deputy*.

Replication in Usual Form Filed May 19, 1904.

34 Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity.

EMILIE SAXLEHNER, Complainant,

against

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

Evidence for final hearing on the part of the Complainant taken *de bene esse* under Sections 863 and 864 of the U. S. Revised Statutes, as amended May 23d, 1900, and in pursuance of the rules and practice of this Court, before Emma Cambreleng, a Notary Public in and for the State of New York, at the office of Briesen & Knauth, 49 Wall Street, New York City, Borough of Manhattan, on the 18th day of August, 1904, pursuant to notice hereto annexed; the time having by agreement of counsel been adjourned to this day.

Present: Antonio Knauth, Esq., of Counsel for Complainant; Walter F. Murray, Esq., of Counsel for Defendants, and the Notary Public.

ALBIN TROJAN, a witness called in behalf of the Complainant, having first been duly sworn, testifies as follows:

Direct examination by Mr. KNAUTH:

Q. 1. Please state your name, age, residence and occupation.

A. Albin Trojan, age 50, 596 Lexington Avenue, New York City, agent for the Hunyadi Janos water, for the Complainant.

35 Q. 2. How long have you been acting as agent of the Complainant for the sale of Hunyadi Janos water in this country?

A. Since 1896.

Q. 3. Had you previous thereto any knowledge about the Hunyadi Janos water?

A. Well, of course.

Q. 4. How long had you any knowledge, in what way?

A. I have known the Hunyadi Janos water for more than twenty years, and that it is a natural mineral water.

Q. 5. How long have you known it to be on sale in the United States?

A. As far as I know, over thirty years.

Q. 6. Under what name is it usually demanded and sold?

A. Generally, as far as I know, under the name of Hunyadi water.

Q. 7. How long has that been the case?

A. As far as I know, over ten years, at least.

Q. 8. Is it demanded by the public under that name now?

A. Yes.

Q. 9. How do you know that?

A. I hear it very often in public and from druggists, too.

Q. 10. Is the water largely sold by druggists?

A. Yes, mostly by druggists, and also by wine and liquor dealers.

Q. 11. Is it used as a beverage or as a medicine?

A. As a medicinal water.

Complainant's counsel offers in evidence a specimen of the bottle of mineral water sold by the defendants, and the same is marked "Complainant's Exhibit—Defendants' Bottle."

Also a label detached from one of defendants' bottles, which is marked "Complainant's Exhibit—Defendants' Label."

36 Also a specimen of the labels as changed by the defendants, and the same is marked "Complainant's Exhibit—Defendants' Changed Label."

Also a specimen of the siphon label of defendants, which is marked "Complainant's Exhibit—Defendants' Siphon Label."

Also a street car advertising sign, heretofore used on the motion for preliminary injunction as "Defendants' Exhibit F," and the same is marked "Complainant's Exhibit—Defendants' Street Car Advertisement."

Counsel for defendants states that the "Complainant's Exhibit—Defendants' Bottle," and "Complainant's Exhibit—Defendants' Label," each represents the label that was used by the defendants prior to the bringing of this suit, and which was discarded by them likewise prior to the bringing of this suit.

Defendants' counsel admits that the other exhibits have been made and used by the said defendants since the bringing of this suit.

Complainant's counsel also offers in evidence a catalogue of the defendants in maroon cover, and the same is marked "Complainant's Exhibit—Defendants' Catalogue of 1901."

Also a priced list of defendants, which is marked "Complainant's Exhibit—Defendants' Price-List."

Also a pamphlet, entitled "An Essay on the Reduction of Obesity," and the same is marked "Complainant's Exhibit—Defendants' Essay."

Also another pamphlet, entitled "To Defeat Thirst," and the same is marked "Complainant's Exhibit—Defendants' Second Pamphlet."

Defendants' counsel admits that the defendants are using the exhibits just offered.

Q. 12. Please tell us when you first knew anything of the manufacture of any artificial mineral water, or artificial salts, or similar products, in this country, bearing the name "Hunyadi?"

37 A. In 1898 I discovered in Boston a so-called artificial Hunyadi salt prepared by the Armstrong Manufacturing Company, of Boston.

Q. 13. Did you take any steps to prevent that manufacture?

A. Yes, immediately, and received a decision in the same year, 1898.

Q. 14. You succeeded in stopping the sale of that artificial preparation?

A. Yes.

Q. 15. Did you thereafter discover any other such preparation bearing the name "Hunyadi"?

A. A little later I discovered that a concern in St. Louis was manufacturing a Hunyadi salt, and that was the Hunyadi Salts Company, of St. Louis.

Q. 16. Did you do anything with reference to the sale of that product?

A. Yes, and we succeeded in that case, too.

Q. 17. Did the complainant bring any suit to enjoin the use of the name "Hunyadi" on the artificial product of the Hunyadi Salts Company?

A. Yes, we did.

Q. 18. And what became of that suit?

A. We got an injunction against the Hunyadi Salts Co.

Q. 19. Did you become aware at any time of the sale of any artificial water sold under the name "Hunyadi" or any name employing the name "Hunyadi"?

A. About the year 1899 or 1900 there was sold in Chicago a so-called Hunyadi Geyza, manufactured by Wm. T. Thackeray in Chicago.

Q. 20. Did you do anything to prevent the use of that name on this water?

A. Yes, we brought a suit at once in the U. S. Circuit Court in Illinois, we got a decision in our favor in that Court, then

38 Thackeray appealed to the U. S. Circuit Court of Appeals, and that Court affirmed the decision of the Circuit Court.

Q. 21. Has the use of the name "Hunyadi Geyza" on Thackeray's water been discontinued since then?

A. Yes.

Q. 22. When did you first learn of the sale of the defendants' artificial Hunyadi Janos water or artificial Hunyadi water?

A. In about 1898, my attention was first called to the artificial Hunyadi Janos water manufactured by the defendants, and a little later on I found that they were manufacturing an artificial Hunyadi water, too.

Q. 23. What did you do when you found that such an artificial water was sold by the defendants?

A. We informed first our attorneys, Messrs. Briesen & Knauth, to that effect, and Mr. Wagner was informed by Messrs. Briesen & Knauth and was asked to stop the use of the name, and then we brought suit.

Complainant's counsel offers in evidence copy of a letter of George J. Murray, Esq., defendants' former solicitor in this case, addressed to Briesen & Knauth, under date of June 18, 1898, the original of which is on file in this case in connection with the papers on the motion for preliminary injunction, and the same is, subject to correc-

tion by the original, marked "Complainant's Exhibit—Murray Letter."

Q. 24. Is it your experience that the purchasing public know where the Hunyadi Janos water comes from and what it is?

A. I have the impression that the public in general do not always know where the water comes from and what kind of water it is; and especially not whether it is a natural or an artificial water.

Q. 25. Among what classes of the public is the Hunyadi Janos water sold?

39 A. It is more sold to the better class of people, but there is a general demand for it.

Q. 26. You mean a general demand from any portion of the public?

A. Yes.

Q. 27. What is your objection to the use of the name "Hunyadi" on an artificial water?

A. Principally that the public is not sure whether it is a natural or an artificial water.

Q. 28. You mean whether the complainant's water is a natural or an artificial water?

A. No, not that; but Hunyadi water in general.

Q. 29. From your experience in the business of selling the natural Hunyadi Janos water, what would be the effect of permitting the use of the name "Hunyadi" on artificial water?

A. If it were permitted to use the name "Hunyadi" as a designation for an artificial water, it would open the door to each and every artificial mineral water manufacturer to use the name or to manufacture an artificial Hunyadi water.

Q. 30. Is it possible by taste to discover whether the water is genuine or not?

A. The public cannot find out any difference by the taste.

Q. 31. Are you or is the complainant still advertising the Hunyadi Janos water in this country?

A. We are still advertising the Hunyadi Janos water in this country extensively, and for the reason that the public in general does not know exactly whether it is a natural or an artificial water, every artificial Hunyadi water would have the benefit of the advertising.

Q. 32. At what price do you sell the Hunyadi Janos water?

A. The retail price is between 25 and 35 cents a bottle.

Q. 33. How large are the bottles?

40 A. They contain a little less than a quart.

Defendants' counsel states in answer to question by complainant's counsel that the defendants' bottle containing a pint retails at from 15 to 20 cents a bottle, and that the wholesale price is \$1.20 for a case of twelve bottles.

Q. 34. What is the wholesale price of a dozen bottles of Hunyadi Janos water?

A. The wholesale druggists in New York City have it in their price-list at \$3.00 per dozen.

Q. 35. Are there still any other natural Hunyadi waters other than

the Hunyadi Janos water, and coming from Hungary, sold in this country?

A. There have been two kinds of Hunyadi water, one Hunyadi Matyas, and another Hunyadi Lajos; but they have no sale any more.

Q. 36. I understand you, then, that the Hunyadi water which is sold in this country at the present time is almost exclusively Hunyadi Janos water?

A. Yes.

Direct examination closed.

Cross-examination by Mr. MURRAY:

X Q. 37. Mr. Trojan, how long have you resided in America?

A. Since 1896.

X Q. 38. Where did you reside previous to that time?

A. I had been travelling in all parts of the world.

X Q. 39. In what business were you engaged prior to your taking the agency in America for the Hunyadi Janos water?

A. About ten years prior to that time I was travelling for the firm of Andreas Saxlehner.

X Q. 40. In what countries had you been travelling during those ten years? You may answer this question with special regard to America.

A. I didn't travel prior to 1895 in the United States, but in other countries.

41 X Q. 41. You state that Hunyadi Janos is a natural mineral water; how do you know this?

A. I have been several times at the Springs, and upon such an occasion I have seen that the Hunyadi Janos water comes from wells.

X Q. 42. How many such wells are there?

A. There are now more than one hundred and twenty-four wells.

X Q. 43. Is the output from all these wells mixed to make the water that is put on the market?

A. As far as I know the water is collected in a cistern through pipes which are each in connection with the cistern, and the water is flowing through the pipes.

X Q. 44. Do you know how many so-called natural Hunyadi waters have been on the market having different suffixes from that of the Hunyadi Janos?

A. Yes, there is for example the Hunyadi Matyas, and the Hunyadi Lajos, and may be a few more, but they had no large sale.

X Q. 45. How were they distinguished from the Hunyadi Janos by the public?

A. The public generally asks for Hunyadi water, and the druggist gives not always Hunyadi Janos, but some other Hunyadi water on which he makes a better profit.

X Q. 46. You spoke of the suit by the complainant here against

the Armstrong people, and I should like you to state what the latter were manufacturing, that is, was it a water?

A. No, it was a salt, and they called it Granular Effervescent Hunyadi.

X Q. 47. Was the suit carried to final hearing. If so, state before whom?

A. The suit was ended by entering a consent decree.

42 X Q. 48. You have spoken likewise of a suit against the Hunyadi Salts Co. in St. Louis; was the decree there likewise a consent decree.

A. Yes.

X Q. 49. Had you in mind the water manufactured by the defendants when you stated that the manufactured water could not be distinguished from the genuine Hunyadi Janos coming from the Hunyadi Springs?

A. Yes, sir.

X Q. 50. The taste of the Wagner, I infer then, is the same as that of the complainant's mineral water?

A. I said that nobody could find out the difference in the taste, except an expert, because there are not many people who could testify that there were two kinds of Hunyadi water. It would also be difficult to find people who could tell the difference in two kinds of champagne, notwithstanding the taste is very often different.

X Q. 51. Have you ever tasted Wagner's water?

A. Yes, sir.

X Q. 52. Does it taste the same as the Hunyadi Janos water of the complainant?

A. No, the taste is different.

X Q. 53. You have spoken likewise about the amount of advertising done by the complainant. They call particular attention in their advertisements to the fact that their water is a natural mineral water, do they not?

A. Yes.

X Q. 54. Still you state that the public do not know that the complainant's water is a natural mineral water; how do you reconcile these two statements?

A. Because the readers of advertisements do not always give special attention to the contents of the advertisement. The readers pick out the principal points, that is, Hunyadi Janos for constipation. That the readers do not always hear everything in mind is proved by the fact that, notwithstanding we advertise the full name of Hunyadi Janos, the public ask only for Hunyadi water, and do not care very much whether it is a natural or an artificial water.

X Q. 55. At what price do the complainants sell Hunyadi Janos per case of fifty bottles?

A. The price of a single case is \$11 net.

X Q. 56. You have stated formerly that there were a number of other Hunyadis, besides Hunyadi Janos, Hunyadi Matyas and Hunyadi Lajos, but that there were only these three on the market, to your knowledge, at present. Were the other Hunyadis obtained control of by the complainants?

A. Oh, not of all.

X Q. 57. Of what ones?

A. Mrs. Saxlehner, or her predecessor in business, bought the Hunyadi Arpad spring, and the Hunyadi Laszlo spring.

X Q. 58. Where were those springs?

A. Near Budapest.

Cross-examination closed.

Redirect examination by Mr. KNAUTH:

R. D. Q. 59. Has any other artificial mineral water to which the name Hunyadi has been given by the manufacturer come to your knowledge, besides those already mentioned by you?

A. Yes; there is one by the name Hydrox Hunyadi, manufactured by the Consumers' Company, in Chicago.

R. D. Q. 60. Is it a water which has been recently put upon the market?

A. Yes, it came up within the last few years.

R. D. Q. 61. Has the complainant taken any steps to enjoin the use of the name Hunyadi on that manufactured water?

44 A. Yes, sir; and this suit is still pending.

R. D. Q. 62. In what court?

A. In the United States Circuit Court for the Northern District of Illinois.

R. D. Q. 63. Has the complainant ever manufactured any salts by evaporation of the natural Hunyadi Janos water?

A. Yes, sir.

R. D. Q. 64. Are you acquainted with those salts?

A. It was several years ago, under the name of Hunyadi Janos salts. I am acquainted with those salts.

R. D. Q. 65. Have you ever ascertained whether or not by dissolving such Hunyadi Janos salts a water like the Hunyadi Janos water is obtained?

A. Yes, I tried it, but I couldn't obtain the same Hunyadi Janos water.

R. D. Q. 66. Is the water so obtained by dissolution of the salts in water strikingly different from Hunyadi Janos water, or is it substantially the same?

A. It is quite different.

Defendants' counsel admits that the defendants' artificial water is not produced by dissolving salts obtained from the evaporation of Hunyadi Janos water in water.

Redirect examination closed.

Recross-examination by Mr. MURRAY:

R. X Q. 67. In what way does the water obtained from the solution of the salts gotten by the evaporation of Hunyadi Janos water differ from the Hunyadi Janos water?

A. I am not able to say.

R. X Q. 68. You do not know whether or not by the evaporation of the water the salts contained therein are changed, do you?

A. It must be they change in some way.

45 R. X Q. 69. But you do not know enough about chemistry to know whether or not some of the constituents are rendered insoluble by thus evaporating the water?

A. I can only speak from the fact that the solution from the Hunyadi Janos salt never produces the Hunyadi Janos water. I do not know enough about chemistry to explain it. The solution produced from the Hunyadi Janos salts is not a clear solution, and the Hunyadi Janos water is a clear water; nor is the effect of the solution the same as the effect of the Hunyadi Janos water. You have to use more of the solution.

Examination closed.

ALBIN TROJAN.

Complainant's *prima facie* proofs closed.

46 United States Circuit Court, Southern District of Ohio,
Western Division.

In Equity.

EMILIE SAXLEHNER, Complainant.

vs.

EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAGNER,
Defendants.

Testimony taken on behalf of the complainant for final hearing on rebuttal, *de bene esse*, under Sections 863 and 864 of the Revised Statutes of the United States, as amended, and in pursuance of the rules and practice of this court, before Emma Cambreleng, a Notary Public, in and for the State of New York, and County of New York, at the office of Briesen & Knauth, 19 Wall Street, New York City, Borough of Manhattan, on the 19th day of May, 1905, pursuant to notice hereto annexed:

Present: Antonio Knauth, Esq., and Otto v. Schrenk, Esq., of Counsel for Complainant; Walter F. Murray, Esq., of Counsel for Defendants.

Direct examination by Mr. v. SCHRENK:

JOHN C. SPARKS, a witness called on behalf of the complainant, having first been duly sworn, testifies as follows:

Q. 1. Please state your name, age, residence and occupation.

A. John C. Sparks, age 28 years, residence 93 West 103d St., New York City, occupation analytical chemist.

Q. 2. Please state what experience you have had as analytical chemist, and especially with reference to mineral waters.

17 A. I graduated as Bachelor of Science in London University in '98. Was made a Fellow of the Chemical Society in '99, and am a member of the American Chemical Society. I have served as an expert on the subject of water for the Pacific Street

Hygeia Ice Company in the Supreme Court of Brooklyn in 1904; for the Crystal Spring Company in Mamaroneck, New York, in 1904. I am the analytical chemist for the Board of Health, Allentown, Pa.; for the Merida Water Works, Merida, Yucatan, Mexico, and also for the Trinity Mineral Springs Company, Bridgefield, N. J. In the past five years I have made several hundred analyses of water in this country and abroad.

Q. 3. Have you made any special study of mineral waters, both natural and artificial?

A. I have.

Q. 4. Are you familiar with the generally accepted authorities and the various publications regarding mineral water?

A. I am.

Q. 5. Are you familiar with the opinion of medical authorities most familiar with the use of mineral waters?

A. I am.

Q. 6. Will you please state what the opinion of such authorities is regarding the therapeutic efficacy of artificial waters, as compared with natural waters that flow from the earth?

A. I have brought four standard authorities to support my view that though the water possibly may have almost the same chemical composition, it will not have the same therapeutic value as a natural water, if artificially prepared.

Q. 7. Is it possible to reproduce the exact physiological and therapeutic action of a natural mineral water by combining the most prominent mineral ingredients of such water as ascertained by chemical analyses?

Question is objected to by counsel for defendants as leading.

A. It has been found, and the authorities I referred to specially mention, that the physiological and therapeutic effect is not the same when the water is artificial.

Q. 8. What is the reason for this?

A. The reason is, that in chemical analysis, even though the analysis may be performed with the utmost care, it is not always certain that the chemical combination found will be exactly the same as that present in the mineral water, for the reason that in assigning the bases of the salts to the salts this is done in an empirical manner, because each base does not come out separately. By this I mean that in a water that contains sodium sulphate, sodium carbonate and sodium chloride all the sodium would be precipitated at one time; in the same way there may be sulphates, carbonates and chlorides of other metals present, and in the analysis all the chlorides will come down at the same time, and then at the end of the analysis the bases are divided up among the metals in their most probable combination in the original water. So it is evident that it is quite possible that the analysis is entirely correct, but that in assigning the bases to the metals there may be some error, and so a synthetic water made up from an analysis is not always the same as the original water of which the analysis was taken.

Q. 9. What is known as to the nature of the combination of various minerals in the natural mineral water?

A. The mineral waters have been analyzed, and the physical effect of their constituents is established in medical science, though their action in combination has not reached any exact standing.

Q. 10. Can you tell from analyzing a natural mineral water in what manner the various constituent elements found by you are combined in the natural water?

A. Not altogether; but there are many physical properties which give an indication as to the combination of the salts.

Q. 11. Is there, or is there not, any exact knowledge in science as to the nature of the combinations as they exist in the natural water?

A. There is no knowledge in science. When many similar metals having each the same base, it is impossible to separate these bases individually; it has to be done collectively; therefore it is not a matter of exactitude in assigning the amount of base to each metal.

Q. 12. What, then, is your opinion as to the similarity of a water manufactured by synthetical methods, as compared with the natural water it is intended to imitate?

A. There is no certainty that it will be the same thing at all in its actual composition, physical properties and therapeutic effects.

Q. 13. In your study of various analyses of the same mineral water made by different chemists, what has been your observation as to the results obtained?

A. In general features they are alike, but in some details they slightly differ.

Q. 14. Why is this?

A. Because for the reasons already assigned to a previous question.

Q. 15. In your opinion, is it possible to produce artificially the same water which nature has made?

A. With any certainty, no. In answering the previous question I intended to add that mineral waters themselves slightly vary owing to different conditions of the surrounding media through which they pass at different times.

Q. 16. By extracting the mineral ingredients from a natural water by means of a chemical analysis, are all the causes found thereby which produce the peculiar therapeutic and physiological actions of that water?

The question is objected to by counsel for defendants as leading.

A. No.

Q. 17. Has it been found, or not, that if these chemical ingredients are combined, according to scientific knowledge, that the water thereby produced has the same efficacy as the natural water from which they were extracted?

A. Sir Henry Thompson, the great English surgeon, says, in his book on the preventive treatment of calculous disease, that if a mineral water be evaporated to dryness, and the salts thereby obtained dissolved in exactly the same amount of water, the resulting water

will not have the same therapeutic effect as the original natural mineral water, and are simply pharmaceutical products.

Q. 18. To what conclusion have you come in this respect from your own experiments and observations?

A. I am not in practice as a physician, and my own experience is the analytical division of the subject.

Q. 19. Can you produce any authorities in corroboration of the views heretofore expressed by you?

A. I can.

Q. 20. Will you please do so, stating the title of the publication and the particular part referred to?

Counsel for defendants objects to the question as calling for incompetent evidence.

51 A. "The Mineral Waters of the United States, and Their Therapeutic Uses," by James K. Crook, pages 35 and 36.

Complainant's counsel offers in evidence the book produced by the witness, and the same is marked "Complainant's Exhibit Dr. Crook's Treatise."

Defendant's counsel objects to this book being offered in evidence, as incompetent.

WITNESS continuing:

"Mineral Springs of the United States and Canada," by Dr. George E. Walton, on page 48.

Q. 21. Is this book that you have just produced a standard work on mineral water, and used by you as such in your profession?

A. It is.

Counsel for complainant offers in evidence the book produced by the witness, and the same is marked "Complainant's Exhibit Walton's Treatise."

Objected to by counsel for defendants as incompetent.

Q. 22. Can you produce any further authorities, and if so, please do so?

Defendants' COUNSEL: Objected to as incompetent.

A. I produce "The Preventive Treatment of Calculous Disease," by Sir Henry Thompson, the famous surgeon, on page 23.

Complainant's counsel offers in evidence the book referred to by the witness, and the same is marked "Complainant's Exhibit Sir Henry Thompson's Treatise."

Counsel for defendants objects to this book's being offered, as incompetent.

WITNESS continues:

I also present "Les Eaux Minerales de la France," which, translated, is "The Mineral Waters of France," by Jacquot and

52 Willm, at pages 80 and 81.

Complainant's counsel offers in evidence the book presented by the witness, and the same is marked "Complainant's Exhibit Jacquot and Willm Treatise."

Counsel for defendants make the same objection to this book as to the former books.

Q. 23. Are you familiar with the French language?

A. I am; I read French.

Q. 24. I hand you a translation of the paragraphs of the publication of Jacquot and Willm just referred to by you, and ask you to state whether that is a correct translation of those paragraphs?

A. I have already gone over this translation, and find it to be translated correctly.

Complainant's counsel offers in evidence the translation produced and referred to by the witness, and the same is marked "Complainant's Exhibit, Jacquot and Willm Translation."

Defendants' counsel makes same objection.

It is stipulated between counsel for the respective parties that either side may produce extracts from the various publications referred to by the foregoing witness, and offer the same in evidence, subject to correction, in place and stead of the originals.

Complainant's counsel accordingly offers in evidence an extract from the "Complainant's Exhibit Walton's Treatise" from page 48, being the paragraph referred to by the witness, and the same is marked "Extract from Walton's Treatise."

Complainant's counsel also offers in evidence extract from pages 35 and 36 of the exhibit "Dr. Crook's Treatise," being the part referred to by the witness, and the same is marked "Extract from Dr. Crook's Treatise."

Complainant's counsel offers in evidence extract from page 23 of the exhibit "Sir Henry Thompson's Treatise," being the paragraph referred to by the witness, and the same is marked "Extract from Thompson's Treatise."

Complainant's counsel also offers in evidence extract from pages 80 and 81 from the exhibit "Jacquot and Willm Treatise," being the paragraph referred to by the witness, and the same is marked "Complainant's Exhibit Jacquot and Willm Extract."

Defendant's counsel objects to each of the extracts as being incompetent evidence, as the books themselves are incompetent; the objection not affecting the above noted stipulation.

(Direct Examination closed.)

Cross-examination by Mr. MURRAY.

X Q. 25. How long have you been a resident of the United States?

A. Five years.

X Q. 26. Prior to your coming to the United States you were a resident of London?

A. Yes.

X Q. 27. What course did you pursue in the University of London?

A. I took the degree of Bachelor of Science in the Scientific Division of the University.

X Q. 28. Had the University no more than one course in science?

A. Yes; I took the chemical course.

X Q. 29. Have you ever made an analysis of either the complainant's water or of the water manufactured by the defendants?

A. I have made an analysis of the Hunyadi Janos water, but not for the plaintiff; this was three years ago. I have not analyzed the water manufactured by the defendants.

54 X Q. 30. What rules does a chemist follow in determining the most probable combinations of salts, or, rather, character of salts, in solution of a water, the bases and acids of which he has determined by an analysis?

A. He would assign to the metals more usually met their proportion of acid equivalent; by this means gradually build up the most probable analysis. By this I mean that he would start with calcium, leaving the rarer metals, such as lithium, to the last.

X Q. 31. It seems to me that my question has not been exactly understood. Does the chemist consider the solubility of the various salts that might be formed, the affinities for each other of various elements, and the other well-recognized laws of chemistry?

A. The counsel for the defendant evidently didn't notice that I mentioned in a previous answer that he would assign first those most generally found, which include all the qualifications of his last question.

X Q. 32. You mean, then, by your answer that the elements most generally found are the most soluble when forming salts with the various acids or bases?

A. I do not mean this at all. I mean the salts most usually found in mineral water.

X Q. 33. How does the chemist decide that there are different salts in mineral water?

A. In your first question on this subject you presupposed that he had made an analysis, and was now assigning the acids to the bases.

X Q. 34. The chemist does not find the salts by an analysis; he finds bases and acids, and then forms a theory as to what
55 salts are in that solution, does he not?

A. Yes.

X Q. 35. It is your opinion, then, that the matter is somewhat guesswork on the part of the chemist?

A. I do not say it is guesswork, but in assigning these bases to the acids there is a certain amount of doubt.

X Q. 36. Do you know that the complainant publishes the composition of its waters?

A. I do know such copies are in existence.

X Q. 37. The complainant then places sufficient faith in the theories of chemists as to the manner in which the bases and acids found by analysis will combine to put them before the public as the real composition of the waters sold by her, and induces the public to buy the waters upon this representation.

Complainant's COUNSEL: Objected to as incompetent, as the witness has been called to testify as to his own knowledge, not as to the intentions of the complainant.

A. I don't see how I can answer that question; I don't know anything about it.

X Q. 38. Have you any reason for supposing that if the same acids and bases in the same quantities be dissolved in a water that the character of the salts in solution will differ from the character of the salts in solution of a natural water, whose analysis shows the same quantity and character of acids and bases?

A. Not in their chemical properties.

X Q. 39. I understand you to say, then that you believe the chemical character of the solutions will be the same in the natural and the so-called artificial water referred to in my previous question?

A. Presuming that the analysis was correct, I do.

56 X Q. 40. From one of your previous questions, I understand you to entertain the opinion that a natural water and a water produced by dissolving the constituents found by analysis to exist in the natural water to have different therapeutic effects; am I right?

A. Yes.

X Q. 41. Can you give any example of this?

A. I quoted four authorities on the subject, and also stated that my experience was not gained from personal practice, as I was not a physician.

X Q. 42. You have never tried this, then, yourself?

A. No.

X Q. 43. Have you read all of these books to which you have referred—the book of Dr. Crook, that of Jacquot and Willm, that of Thompson, and of Walton?

A. I have read them.

X Q. 44. Do I understand you that you have read all of these books through?

A. Yes, with the exception of "Les Eaux Minerales de la France."

X Q. 45. Which one of these books had you read before your attention was directed to them by counsel for complainant?

A. As an analytical chemist familiar with waters I knew Dr. Walton's and Dr. Cook's books.

X Q. 46. Had you read them?

A. I had. They are standard works.

X Q. 47. In one of your answers you quote from a book by Sir Henry Thompson a paragraph which says that if mineral waters be evaporated, the salts obtained therefrom would have no more power than similar salts met with in every chemist's shop; do you know what mineral waters Sir Henry Thompson was referring to?

57 A. In the same chapter in which he makes this remark he speaks of the Epsom Spring water and of the Hunyadi Janos water.

X Q. 48. Is it not a fact that in evaporating Hunyadi Janos water to dryness the bicarbonate contained therein will be reduced to insoluble carbonates?

A. Yes, insoluble in water free from carbonic acid.

X Q. 49. In the presence of carbonic acid these salts become bicarbonates?

A. No; they are merely held in solution by the carbonic acid present.

X Q. 50. If you evaporate an artificial water, honestly prepared from the analysis of a natural water, would the residuum differ from that obtained by evaporation of the natural water?

A. If the contained salts were the same, no.

X Q. 51. What do you mean by "if the contained salts were the same;" do you mean if the salts in both were the same?

A. Yes.

X Q. 52. And you have said before that you did not know how the salts were contained in a natural water. I ask you again, if you take the bases and acids which a chemist has determined to exist in a natural water, dissolve them, to produce an artificial water, evaporate the water and analyze the residuum, do you get the same analysis for the artificial as you obtain for the natural?

A. The acids and bases not existing separately, no water could be prepared according to that method.

X Q. 53. What method does the chemist pursue in getting the same number of acids and bases in the water in solution as certain resultant salts?

A. As explained before, he builds up the salts from the acids and bases found, first forming those that are generally found,
58 and making the solution from corresponding quantities of these salts, as calculated from the analysis.

X Q. 54. Now, my previous question assumed that the chemist had so built up the artificial water; now, with this assumption before you, I ask you again, would the analysis of the artificial differ from that of the natural?

A. Not if the analysis of the natural was correctly grouped.

(Recess to 2.15 p. m.)

X Q. 55. What causes produce the effects of a natural mineral water other than the chemical character of the water?

A. The physical properties, as well as the chemical.

X Q. 56. What do you mean by the physical properties of the water?

A. I mean that the same chemical salts may be held in solution under slightly different conditions, and thereby produce a different physical effect.

X Q. 57. How would you determine under what conditions the salt was held in solution?

A. By an examination of the occluded gases, the physical conditions of the source of supply of the water and the character of the media through which the water passes and dissolves the contained salts.

X Q. 58. By the examination of the media through which the water passes you would determine, I presume, the times at which the various salts were taken up by the water, would you?

A. No; you would find in what form the salts existed in that media.

X Q. 59. And this would determine the manner in which they were held in solution, would it?

A. This, and the foregoing remarks on this subject would determine in what manner they were held in solution.

59 X Q. 60. If a number of salts are placed in solution together, do they retain their character as such salts, or are there a number of chemical reactions which take place, so that the final character of the salts in solution differs from that in which they were put in?

A. No general answer can be made to this question. Some salts react with each other, and some do not.

X Q. 61. By a chemical analysis of the water you could not determine whether or not the salts were held in the same condition in which they existed prior to the solution?

A. Presupposing all the salts stay in solution. By that I mean that nothing is precipitated, you could not tell.

X Q. 62. Do you know what occluded gases there are in Hunyadi Janos?

A. Yes. Carbonic acid, and, to the best of my knowledge and belief, a trace of sulphuretted hydrogen.

X Q. 63. Does the analysis of Fresenius show any sulphuretted hydrogen?

COMPLAINANT'S COUNSEL. Objected to as incompetent, as the analysis speaks for itself.

A. I don't think it does.

X Q. 64. Have you seen any analysis with this substance? If so, whose?

A. I cannot cite one at the moment.

X Q. 65. To what page of Thompson do you refer in your answer to Question 47?

A. Page 23.

X Q. 66. I wish you would quote the language, or if it be the same extract which has been offered in evidence please indicate the fact.

A. It is the same which is contained in Complainant's Exhibit Thompson Treatise extract.

60 X Q. 67. Do you read German?

A. No, I do not.

X Q. 68. You are not familiar then with the German literature upon the subject of mineral waters?

A. I am not.

X Q. 69. Have you ever heard of E. Raspe?

A. I have heard of him.

X Q. 70. Is he a recognized authority?

A. To the best of my belief; I have not read any of his works, however.

Redirect examination by MR. A. SCHRECK.

R. D. Q. 71. You have heretofore testified that the chemical character of a solution prepared from acids and bases according to the analysis of a natural mineral water will have the same chemical character as the natural mineral water. Is it your testimony that a

water thus prepared artificially is the same water as the natural water which it is supposed to imitate, or not?

A. The same in chemical composition, but not necessarily the same in physical action.

R. D. Q. 72. Does the natural Hunyadi Janos contain anything else besides the chemical salts obtained from an analysis?

A. Its physical properties have also a great deal to do with its therapeutic effect.

R. D. Q. 73. Does it contain any organic matter?

DEFENDANT'S COUNSEL: Objected to as leading.

A. All natural waters contain a certain amount of organic matter.

R. D. Q. 74. Does the chemist in analyzing a natural mineral water analyze the organic matter, or not?

A. To a certain extent he does; he measures the amount of free and albuminoid ammonia emanating from the nitrogenous portion of the organic matter. He also estimates the nitrates, and
61 examines for nitrates, which, however, are not present in mineral waters. He also makes a culture on peptonized gelatine to localize any organisms that may be present, and these are afterward examined under a microscope.

R. D. Q. 75. Can or can not such organic matter be reproduced artificially to the exact condition in which it occurs in the natural water?

A. Not except pure cultures of these organisms were taken, which is practically an impossibility.

R. D. Q. 76. And could an artificial water, which does not contain any of this organic matter which is found in the natural water, be called an exact reproduction of the natural water?

A. No.

R. D. Q. 77. Is there any method known to science by which the exact manner in which different chemical constituents are combined or act upon each other in a natural water can be ascertained?

A. There is no method, to my knowledge.

R. D. Q. 78. Does or does not, then, a mere chemical analysis of the chemical ingredients of a natural mineral water give any clue to the manner in which the different elements are combined by nature in the natural water?

A. It gives some clue, of course, but not as to the entire combination.

R. D. Q. 79. In view of all these explanations which you have given, what is your opinion as to the nature of an artificial product prepared by an analytical chemist according to some chemical analysis of natural Hunyadi Janos, as compared with the natural Hunyadi Janos?

A. I would say that it would possibly be very close in its chemical composition, but not in its physical qualities.

R. D. Q. 80. Could it be stated, or not, that the chemicals
62 in such an artificial preparation are combined in the same manner as they are combined by nature in the natural one?

A. It could not be definitely stated that they are so combined.

R. D. Q. 81. What do you know as to the publication heretofore offered in evidence and marked "Crook's Treatise"?

A. I know it to be one of the standard works on mineral waters, and generally accepted as one of the leading authorities on this subject; that the book covers the United States very fully and all of the well-known European springs.

Recross-examination by Mr. MURRAY:

R. X Q. 82. Do any of the analyses of Hunyadi Janos by recognized authorities, or as published by complainant, show any organic substances, or make any mention of nitrates, nitrites or albumenoid ammonia?

A. It is not usual in an analysis of a mineral water to publish the percentage of contained organic matter. This is merely the sanitary provision of a water analysis. Any water that is offered as a mineral water is offered on account of its beneficial action, which presupposes sanitary purity.

R. X Q. 83. These organic substances, then, are regarded as impurities?

A. They are not regarded as impurities, except when present in excess.

R. X Q. 84. Their tendency is not sanitary?

A. Not if present in excess.

Examination closed.

JOHN C. SPARKS.

63 Counsel for complainant offers in evidence copy of a final decree in the suit of Emilie Saxlehner, complainant, *vs.* Armstrong Manufacturing Company, entered on June 23rd, 1898, in the United States Circuit Court for the District of Massachusetts, and the same is marked "Complainant's Exhibit Armstrong Decree."

Complainant's counsel also offers in evidence copy of the final decree in the suit of Emilie Saxlehner *vs.* The Consumers' Company, entered on August 17th, 1901, in the United States Circuit Court for the Northern District of Illinois, Northern Division, and the same is marked "Complainant's Exhibit Consumers Decree."

It is agreed by defendants' counsel that the foregoing copies of two decrees may be offered in lieu of certified copies, subject to correction.

Complainant's counsel produces a book entitled "Traite des Marques de Fabrique," by Eugene Pouillet, 4th Edition, published at Paris, 1898, and offers in evidence an extract from said book on pages 187 to 189, which extract is marked "Complainant's Exhibit Pouillet Extract."

Complainant's counsel also offers in evidence a translation of such extract, and the same is marked "Complainant's Exhibit Translation of Pouillet Extract."

Complainant's counsel produces a book entitled "Grand Dictionnaire International de la Propriete Industrielle," by Count Maillard de Murafy, published at Paris, 1892, and offers in evidence an ex-

tract from page 542 of said publication, the same being marked "Maillard de Marafy Extract."

Complainant's counsel also offers in evidence a translation of said extract, and the same is marked "Translation of Maillard de Marafy Extract."

Counsel for defendants objects to the offering of these
64 books, extracts and translations thereof as being incompetent, but consents that the copies and translations may be used, subject to correction, if competent.

Complainant rests.

COMPLAINANT'S EXHIBIT, "MURRAY LETTER."

Geo. J. Murray, Counsellor in Patent Cases, Solicitor of Patents,
Rooms 28, 29 and 30 Wiggins' Block.

Telephone 1134.

CINCINNATI, O., *June 18, 1898.*

Messrs. Briesen & Knauth, 229 Broadway, New York City.

GENTLEMEN: Since the receipt of your favor of June 8th I have given renewed consideration to the claims you make for your client, Saxlehner. I have found, upon investigation, that there are a number of wells producing natural Hunyadi water, and that various parties have brought out and put upon the market a water bearing the name "Hunyadi," and if you are entitled to the name "Hunyadi" used upon any kind of water, even natural Hunyadi water, these parties would probably be held to infringe upon your client's rights. I have four bottles that I collected without much trouble, all of the same shape as your client's bottle, the labels of all of them bearing the title "Natural Hunyadi Water," and each put up by a different party, and I think I can, without much trouble, collect more, but I don't know any one that has been stopped by injunction except the English case referred to, and that was decided for other reasons than the mere use of the name "Hunyadi."

I have carefully examined the cases you refer me to in your communication, and many others bearing on the subject, and I do not
65 find one that, in my opinion, is anything like our case, but many of them are point blank against the position your client assumes. There can be no question that any one has the right to imitate artificially the natural Hunyadi water, or any other water (there is no patent on the water), so long as the goods are so dressed that no one could be deceived into buying one for the other.

My clients are entirely responsible. You will have no trouble at any time in getting a full account of all the goods they have sold, if you can establish your right to such accounting. After you have had a decision of any court in a fairly contested case involving the same facts that you would have to prove in a suit against my clients, and notify me of that fact, you can obtain adequate relief without

litigation, as I will certainly advise no one to infringe upon the rights of others, if I know it, any more than I would permit any of my clients to pay tribute to any one not entitled to it.

Yours truly,
(Signed)

GEO. J. MURRAY.

COMPLAINANT'S EXHIBIT JACQUOT AND WILLM TRANSLATION.

The Mineral Waters of France.

	By	
E. Jacquot,		Willm,
Inspector General	and	Professor of Chemistry
of Mines,		at the Faculty of
		Sciences of Lille.

Paris, 1894.

(From page 80.)

The arrangement of the elements is evidently hypothetical, because we know up to this time of no accurate means of ascertaining the distribution in a solution of the acids and bases, or the acid radicals and the metals (according as the dualistic or the unitary notation is adopted).

These elements of the salts are undoubtedly permanently in conflict until one cause or another brings about the elimination of this or that saline group; but one cannot draw from such elimination the definite conclusion that the group really existed in solution.

If we dissolve in water two salts differing by their acid and by their metal as well, it is easy to show that the solution really contains four salts, owing to a double partial decomposition. All the acids divide all the metals among themselves, and *vice versa*. But the proportions in which these exchanges are made elude us.

COMPLAINANT'S EXHIBIT EXTRACT FROM "WALTON'S TREATISE."

The Mineral Springs of the United States and Canada.

By George E. Walton, M. D.,

Member of the Societe Francaise D'Hygiene, Paris; ex-President of the Academy of Medicine, Cincinnati; Member of the Ohio State Medical Society; formerly Professor of the Principles and Practice of Medicine in the Cincinnati College of Medicine and Surgery. Third Edition, New York, 1892.

On page 48, entitled Chapter V, Chemical Constituents:

"It is nevertheless true that the combinations of the elements, as shown in analyses, are altogether empirical. The chemist first de-

termines the bases—the amount of magnesia, soda, potassa, lime, alumina; then the acids and gases—the carbonic acid, sulphuric acid, silicic acid, chlorine, iodine; and, after each of these elements is separated, he combines them according to approved formula, giving the result in so many grains of carbonate of magnesia, sulphate of potassa, chloride of sodium, iodide of sodium, etc.

Yet, although the chemist may have performed his work most faithfully, still there are unknown quantities that elude his search, appearing in the analysis under the designations loss, organic matter, or extractive matter. These facts, however, only show that chemical science is not perfect."

COMPLAINANT'S EXHIBIT "EXTRACT FROM DR. CROOK'S 'TREATISE.'"

The Mineral Waters of the United States and Their Therapeutic Uses.

By James K. Crook, A. M., M. D.

New York, 1899 (pp. 35 and 36).

"In what way do mineral waters act, and how do they produce their therapeutic effects? We may answer this query by the statement that in a general way their influence is wrought in the same manner as is that of other medicinal agents. It is easy to understand that a water densely impregnated with the sulphate of magnesia will cause alvine evacuations, and that one containing iron will increase the amount of hæmoglobin in the red-blood-cells; yet it must be confessed that an element of mystery still shrouds the action of many waters, and the good effects obtained from their use are difficult to explain. It is known that a mineral water containing a very minute quantity of the sodium or magnesium sulphate will often serve to overcome chronic torpidity of the bowels, while certain arsenical waters, holding in solution less than 1-100th of a grain of arsenic to the gallon, will soon produce the characteristic physiological action of that powerful drug. It is also known that a very few

grains of carbonate of calcium to the gallon will greatly increase the diuretic action of water. These effects cannot be produced by artificially adding these substances to water. The only explanation which can be offered for the more potent action of natural waters may be found in the fact that the mineral ingredients contained in them are in a state of combination which we cannot exactly simulate in a synthetic water. The combinations presented to us by the analytical chemist, while, no doubt, accurate in the main, or sufficiently so for practical therapeutic purposes, are, nevertheless, arbitrary or hypothetical, and we cannot produce them as they exist naturally. As Professor Oscar Liebreich has observed, the analysis, even when made by the most careful chemist, frequently does not account for the full 100 per cent. of contents, but leaves a very large x unaccounted for, of whose nature we have no idea. We prescribe mineral waters on account of their most prominent ingredients, but we cannot be perfectly sure that the substances present in smaller

quantities do not play a more important part in the physiological action of the whole water than we generally concede to them." Up to the present time, then, it must be confessed that we have no fixed scientific basis for mineral hydrotherapeutics. Our position is still largely empirical, and, notwithstanding the great improvements in the methods of chemical analysis, is based, to a large extent, upon clinical experiences and observations; but with all our concessions as to a want of exact knowledge, the point must be yielded that in many obstinate and intractable conditions we have in the internal and external use of certain mineral waters a most efficient and valuable method of treatment, and that such water may be credited with a wide range of therapeutic usefulness."

(69) PLAINTIFF'S EXHIBIT "EXTRACT FROM THOMPSON'S
TREATISE"

On the Preventive Treatment of Calculous Disease and the Use of Solvent Remedies.

By Sir Henry Thompson.

Third Edition, Published in London, 1888 (pp. 23).

"As a proof of the superior force of the saline combinations found in the natural springs, I may refer you to the following experiment: If you will reduce by careful evaporation, as I have done, such mineral waters to their pharmaceutical condition of crystallized salts, you will find that they possess no more power than similar salts obtained by the ordinary commercial processes, and met with in every chemist's shop. Having been separated by evaporation, they no longer act with the energy which belonged to them when in the state of solution which the natural spring produces. You will, therefore, readily understand that it may be essential, at all events, that it is desirable, to employ the natural mineral waters: since what are called 'artificial waters,' however admirably prepared, are simply pharmaceutical products, and are destitute of a remarkable quality which distinguishes the remedies they are designed to imitate."

At a Stated Term of the Circuit Court of the United States for the District of Massachusetts, in the First Circuit, held at the Court Rooms of said Court in the City of Boston, in the State of Massachusetts, on the 23rd day of June, 1898.

Present: Hon. Le Baron B. Colt, Circuit Judge.

No. 1025. In Equity.

EMILIE SAXLEHNER, Complainant,

vs.

ARMSTRONG MANUFACTURING COMPANY, Defendant.

Final Decree, June 23, 1898.

This cause having come on to be heard on the bill of complaint herein, and the complainant having waived an accounting of the profits and damages, and the costs having been adjusted between the parties at the sum of Thirty Dollars (\$30.00), and the defendant consenting to the entry of this decree,

Now, therefore, upon consideration thereof, and on motion of Briesen & Knauth, solicitors for the complainant, and due deliberation had, it is hereby

Ordered, adjudged and decreed that the complainant, Emilie Saxlehner, is, and her predecessor in business, Andreas Saxlehner, has been, the owner of certain bitter water springs situated at Orsod, within the city limits of the City of Buda, in the Kingdom of Hungary, and that the said bitter water springs and the water bottled therefrom have since the year 1863 been known and designated by the arbitrary and fanciful name "Hunyadi Janos," or, shortly "Hunyadi," adopted as a trademark for the same by said Andreas Saxlehner, and said name has been applied to the water coming from said bitter water springs and bottled and sold by the complainant and her predecessor, Andreas Saxlehner, continuously since the year 1865, and that large quantities of bitter water coming from said bitter water springs were exported to and sold in the United States of America continuously since the year 1872 under the names "Hunyadi" and "Hunyadi Janos;" and that the said Andreas Saxlehner and the complainant, Emilie Saxlehner, have evaporated some of the water from said Hunyadi bitter water springs and produced a residuum mainly consisting of certain salts, which salts have been sold by them in Europe and in this country under the name of "Hunyadi-Janos Bittersalts;" and that the complainant is exclusively entitled to the use of the said names of "Hunyadi" and "Hunyadi Janos," and each of them, upon bitter water and bitter water products; and it is further

Ordered, adjudged and decreed that the said defendant, Armstrong Manufacturing Company, heretofore and before the commencement of this suit, without license or allowance, and against

the will of the complainant, in violation of the rights of said complainant and infringing the trademark of the said complainant, offered for sale and sold certain artificial salts not evaporated from the complainant's Hunyadi Janos water, or in anywise coming from the waters of the bitter water springs of the complainant, in bottles bearing a label with the trademark "Hunyadi" of the complainant thereon printed in large and prominent type; and

72 said label also having printed in smaller type over said word "Hunyadi" the words "Granular Effervescent;" and that such bottles were packed in wrappers on which was printed a similar label, likewise containing the words "Granular Effervescent Hunyadi;" all in violation of the complainant's exclusive right to the use of the name "Hunyadi" upon bitter water and bitter water products; and it is further

Ordered, adjudged and decreed that the said defendant, Armstrong Manufacturing Company, its officers, directors, managers, servants, agents, attorneys and workmen, and each and every one of them be and they hereby are perpetually restrained and enjoined from procuring, parting with, selling or offering for sale within the United States of America any salt or preparation not coming from the bitter water springs of the complainant, or made out of the Hunyadi Janos water of the complainant, under the name or designation of "Hunyadi," or any name or designation in which the word "Hunyadi" occurs, and especially the words "Granular Effervescent Hunyadi." And it is further

Ordered, adjudged and decreed that the complainant, Emilie Saxlehner, recover of the defendant, Armstrong Manufacturing Company, the sum of Thirty 00-100 Dollars, costs and disbursements of this suit, and that judgment be entered for said sum against the said defendant and in favor of the said complainant.

By the Court.

BENJ. H. BRADLEE,

Deputy Clerk.

The entry of the foregoing decree is hereby consented to.

ARMSTRONG MFG. CO.,

By CHAS. A. KILHAM, *Treas.*

Boston, June 21, 1898.

73 COMPLAINANT'S EXHIBIT "CONSUMERS' DECREE."

Circuit Court of the United States, Northern District of Illinois,
Northern Division.

WEDNESDAY, August 17, 1904.

Present: Hon. Christian C. Kohlsaat, District Judge.

No. 27176. In Equity.

EMILIE SAXLEHNER, Complainant,
against
THE CONSUMERS' COMPANY, Defendant.

This cause having come on for final hearing upon the bill of complaint, the answer thereto of the defendant and the replication of the complainant, and complainant, by her solicitors, having moved for the entry of a final decree, upon said pleadings, for perpetual injunction, in accordance with the prayer of the complaint, with costs, an accounting for damages or profits being waived by complainant, and the defendant, by its solicitors, consenting to the entry of this decree:

Now, therefore, upon consideration thereof, and on motion of Briesen & Knauth, solicitors for the complainant, and due deliberation having been had, it is hereby

Ordered, adjudged and decreed that the complainant, Emilie Saxlehner, is the proprietor of certain bitter water springs in the Kingdom of Hungary called "Hunyadi Janos," and has for many
74 years exported to and sold in the United States of America the water bottled therefrom; that ever since its introduction into the markets of this country, in or about the year 1870, said bitter water has been bought and sold in this country under the name "Hunyadi Water," and is used, bought and sold under said name, which is its common, short, and popular appellation, and said complainant's natural bitter water, together with certain other natural bitter water exported from Hungary, coming from similar springs, is now known in this country under the name "Hunyadi Water," which name indicates in the United States the origin of said water; that the name "Hunyadi" is not descriptive of any mineral water, but was selected by Andreas Saxlehner, predecessor in business of the complainant, as an arbitrary and fanciful name for the waters of his springs, and said complainant has a valuable interest in said name and said name Hunyadi has not become a name for any manufactured or artificial mineral waters; and it is further

Ordered, adjudged and decreed that the defendant, The Consumers' Company, a corporation incorporated under the laws of the State of Illinois, heretofore and before the commencement of this suit, without the license and allowance of and against the will of the complainant, in violation of the rights of said complainant, did put up for sale, sell and offer for sale an artificial preparation manu-

factured by it in Chicago, in the State of Illinois, in bottles bearing labels with the following descriptions:

75 EXHIBIT A.

Hydrox
Hunyadi

Keep on Its Side in a Cool Place.

EXHIBIT B.

Sparkling
Hydrox
Hunyadi.

Analysis: Parts, 10,000.

Sodium Chloride	160.85	Lithium Bicarbonate	Trace
Potassium Sulphate . . .	13.29	Strontium Bicarbonate . . .	Trace
Sodium Sulphate	1966.21	Sodium Phosphate	Trace
Magnesium Sulphate . .	1949.42	Potassium Nitrate	Trace
Calcium Bicarbonate . .	125.37	Sodium Bromide	Trace
Calcium Sulphate	13.79	Sodium Borate	Trace
Ferrous Bicarbonate . .	0.28	Potassium Iodide	Trace
Silica	1.12		

Prepared from Double Distilled Water.

The Consumers' Company,

Chicago.

and that the use of the name "Hunyadi" on said labels, and each of them, on defendant's manufactured water, is an infringement of the complainant's rights to said name; and that said defendant after notice from said complainant has continued until recently to sell its said manufactured product, and has used thereon the said name "Hunyadi" as a designation for the same; and it is further

Ordered, adjudged and decreed, that a perpetual injunction be issued out of and under the seal of this Court, enjoining and restraining the defendant, The Consumers' Company, its agents, attorneys, servants, and workmen, and each and every one of them, from the use of the word "Hunyadi" as a designation for manufactured mineral water, and from selling or offering for sale any manufactured mineral water under the name "Hydrox Hunyadi," or under the name "Sparkling Hydrox Hunyadi," or under any name of which the word "Hunyadi" forms a part; and from in any manner representing to the public that said defendant's manufactured product is a "Hunyadi" water; and it is further

Ordered, adjudged and decreed, that the complainant, Emilie Saxlehner, recover from the defendant, The Consumers' Company, her costs and disbursements of this suit to be taxed, an accounting for profits or damage being waived.

Enter Aug. 17, 1904.

(Signed)

KOHLSAAT, J.

We consent to the entering of the above decree.

DREYENFORTH, DREYENFORTH & SEE,

Solicitors for Defendant.

NORTHERN DISTRICT OF ILLINOIS,

Northern Division, ss:

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the decree entered in said Court on the 17th day of August, A. D. 1904, in the cause wherein Emilie Saxlehner is the Complainant and The Consumers' Company is the Defendant, as the same appears from the original records now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 24th day of August, A. D. 1904.

MARSHALL E. SAMPSELL, *Clerk.*

By H. T. STODDARD.

77 COMPLAINANT'S EXHIBIT "TRANSLATION-POUILLET
EXTRACT."

Treatise on Trade-Marks.

By Eugene Pouillet.

4th Edition.

Paris, 1898.

Pages 487-489.

But, since then, science has made progress: it has ascertained that no imitation of natural mineral waters was possible, and the last edition of the "Codex" dropped from the French pharmacopeia, even the denomination "Artificial mineral waters." The preface of the Codex says in regard to this:

"The most exact and best conducted analyses have been able to provide but an incomplete knowledge of the composition of mineral waters. Even in the cases where their constituting elements could be isolated, their mode of arrangement and combination could not be determined with certainty: finally, certain organic elements, the

action of which is incontestable, have not been reconstituted. Therefore, it is impossible to concede to the preparations known under the appellation of "Artificial mineral waters," the properties of the natural mineral waters. When used a distance away from their springs, the warm waters undoubtedly lose their thermal condition, and the gaseous waters more or less of the constituent gases; but in view of the facilities and rapidity of connections, it may be permitted to state that transportation does not alter noticeably the precious properties of natural mineral waters. In accordance with the Hygienic Advisory Committee, the Commission of the "Codex" decided it to be opportune to have the evidently improper appellation "Artificial Mineral Waters" disappear from the French pharmacopeia, and to keep in it only the formulas of the saline gaseous or non-gaseous solutions as medicaments.

Before so formal an opinion of science the jurist can only bow. If we (formerly) admitted that whoever imitated a mineral water had the right to take the name of the natural mineral water as a designation for his artificial composition, it was because, at the same time, we admitted that the artificial water was similar to natural water and reproduced its properties. The moment this idea must be abandoned and the moment it is admitted that natural mineral waters defy all imitation, the use of the name of the natural water to designate the alleged artificial preparation must also be forbidden lest we should authorize actual deception about the nature of the merchandise sold.

We consequently do not hesitate to condemn an opinion which science has found wrong and which it rejects utterly. Whoever will make such preparations will have to give to this product, which is a true medicament some name which he will find convenient and which he will take at his own option, either from its properties or from pure fancy, as for any other medicament.

79 COMPLAINTANT'S EXHIBIT "MAILLARD DE MARAFY
EXTRACT."

Great International Dictionary of Industrial Property.

By the Count De Maillard de Marafy.

Third Volume.

Paris, 1891.

Page 542.

We profess an absolutely opposed opinion. The reason therefor is that artificial mineral water in no way reproduces the natural mineral water and cannot reproduce it. The laboratory in which the natural mineral water is prepared disposes of means which man is powerless to attain, in the present state of science. Whatever regulations may be adopted there will always be a large margin for fraud.

Since artificial mineral water does not reproduce chemically, it might even be said physiologically, natural mineral water, the appellations given to the latter are not necessary appellations. Consequently, nothing is more simple than to apply to the artificial mineral waters the practice adopted for all compounded medicaments.

80 COMPLAINTANT'S EXHIBIT "DR. SANDER'S 1ST LETTER."

The Enno Sander Mineral Water Company

Manufacture

The Best Mineral Waters and Aromatic Ginger Ale from Pure Chemicals and Pure Distilled Water.

125-129 South Eleventh Street.

Phone 779.

Garrod Spa,
American Lithia Water,
Carlsbad, Etc.

Carbonic,
Selters,
Vichy, Etc.

St. Louis, *January 28th, 1901.*

Messrs. Briesen & Knauth, New York.

GENTLEMEN: Your very polite and considerate letter of the 23d has been duly received this A. M. Its content has been fully and highly appreciated. Until about two years ago I have been manufacturing a laxative mineral water under the name of Hunyadi Janos, which was prepared after the analysis of Justus von Liebig as published on the labels of Andreas Saxlehner's Hunyadi Janos. But after I was notified of the filing of the Trademark, I have ceased to use the enclosed label, and manufacture instead a very popular water, the "Relief," the formula of which I enclose.

If I have omitted this statement in the affidavit prepared by Wagner's Sons, I certainly have mentioned it in the letter I sent with it.

You will perceive from the above that I have never intended to violate the proprietary rights of Mrs. Emilie Saxlehner, and I
81 declare myself perfectly willing to attach my signature to a formal agreement, which I might do now if it had been enclosed with your letter.

With thanks for your courtesy, I remain,

Very truly yours,

ENNO SANDER.

COMPLAINANT'S EXHIBIT "DR. SANDER RELIEF LABEL."

Dr. Enno Sander's Relief, a Health-Giving Mineral Water.

Contains in 16 fluid ounces:

Magnesium Sulphate Cryst.....	287.50
Potassium Sulphate.....	2.75
Sodium Sulphate Cryst.....	212.25
Sodium Bicarbonate.....	8.25
Sodium Chloride.....	5.75
Distilled Water.....	q.s.

Compounded by the Enno Sander Mineral Water Company, St. Louis.

82 COMPLAINANT'S EXHIBIT "DR. SANDER'S 2ND LETTER.

The Enno Sander Mineral Water Company

Manufacture the Best Mineral Waters and Aromatic Ginger Ale from Pure Chemicals and Pure Distilled Water.

125-129 South Eleventh Street.

Phone 779.

Garrod Spa,
American Lithia Water,
Carlsbad, Etc.

Carbonic,
Selters,
Vichy, Etc.

ST. LOUIS, *Feb'y 2nd*, 1901.

Messrs. Briesen & Knauth, New York.

GENTLEMEN: The affidavit enclosed in your favor of 30th ult. was perfectly satisfactory, as you will learn from its enclosure. Thanking you once more for your courteous action in this case, I take the liberty to assure that you will always find me ready to respect the right of others and to do unto them as I want them to do unto me.

Very truly yours,

ENNO SANDER.

83 COMPLAINANT'S EXHIBIT "COPY DR. SANDER'S AGREEMENT."

Agreement made this 1st day of February, 1901, between Emilie Saxlehner, of the City of Budapest, Hungary, party of the first part, and The Enno Sander Mineral Water Company and Dr. Enno Sander, both of St. Louis, Missouri, parties of the second part, witnesseth:

Whereas, Said party of the first part is the owner of the Hunyadi Janos wells at Budapest, Hungary, and of the name or trademark "Hunyadi Janos," which she and her predecessor in business,

Andreas Saxlehner, have for many years used in her business upon the bitter water being sold and known in the United States of America under the name of "Hunyadi Water" or "Hunyadi Janos Water;" and,

Whereas, Said parties of the second part had until about two years previous to the date of this agreement manufactured an artificial laxative or bitter water and sold the same under the name of "Hunyadi Janos" as an artificial reproduction of complainant's said bitter water, but have since said time discontinued the use of said name "Hunyadi Janos" on said artificial water, upon learning that said complainant claimed trademark rights in said name; and,

Whereas, Said party of the first part is willing to waive any claims, demands, or actions which she may have against said parties of the second part in consideration of the premises and agreements herein contained; now,

Therefore, Said parties have agreed as follows:

84 First, Said parties of the second part jointly and severally agree with said parties of the first part that they will not hereafter sell or cause to be sold any artificially prepared laxative or bitter water in the United States of America under the name "Hunyadi Janos" or "Artificial Hunyadi Janos," or employ the name "Hunyadi Janos" or the name "Hunyadi" in any manner upon any artificial bitter water hereafter.

Second, Said party of the first part in consideration of the premises agrees to and hereby does waive all claims or demands for injunction, damages or profits, or costs, which she may have had, or may have, or would otherwise have, against said parties of the second part, or either of them, by reason of the manufacture or sale of any artificial bitter water by them, or either of them, to which the name "Hunyadi Janos" or "Artificial Hunyadi Janos" or "Artificial Hunyadi" had been applied.

In witness whereof the parties have hereunto set their respective hands the day and year first above written.

Signed and delivered in the presence of:

*Complainants Exhibit
Defendants Price List*



...Price List...

W. C. Wagner's Sons,

Cincinnati, Ohio, U. S. A.



Complamants Exhibit.
"Defendants Siphon Label"

THE PRESENCE OF
 CARBONIC ACID GAS
 MAKES OUR WATER
 MORE ACTIVE, DIGESTIBLE
 AND PLEASANT.
 263 IN EVERY BOTTLE
 THERE IS ONE OF THE
 HUNYADI WATERS.

W. T. WAGNER'S SONS
 HUNYADI
 HUNYADI JANOS SPRINGS

100,000 PARTS CONTAIN
 SODIUM CHLORIDE 13.29
 POTASSIUM SULPHATE 13.79
 CALCIUM PHOSPHATE 13.79
 MAGNESIUM 13.79
 FERROUS BICARBONATE 0.28
 ALUMINUM 1.12
 FERROUS BICARBONATE 0.28
 SILICA 1.12

Complamants Exhibit
"Defendants Changed Label"

The word "artificial" 264
 on the original
 Exhibit is some-
 what smaller.

**WAGNER'S
 ARTIFICIAL
 CARBONATED**

"HUNYADI"

CONFORMING TO FRESSENIUS' ANALYSIS OF THE
 HUNYADI JANOS SPRINGS.

100,000 PARTS CONTAIN

SODIUM CHLORIDE	13.29	POTASSIUM SULPHATE	13.79
MAGNESIUM	13.79	FERROUS BICARBONATE	0.28
CALCIUM BICARBONATE	1.12	SILICA	1.12

A SAFE, GENTLE AND RELIABLE APERIENT AND SALINE LAXATIVE
 CAUSING NO COLIC NOR IRRITATION OF THE INTESTINES.

The presence of Carbonic Acid Gas renders our water
 more active, digestible and pleasant, thus making it
 superior to the natural Hunyadi Waters.

PREPARED FROM DIAMOND DISTILLED WATER BY
W. T. WAGNER'S SONS,
 1820-1826 RACE STREET, CINCINNATI, O.

85 COMPLAINANT'S EXHIBIT "COPY DR. SANDER'S AFFIDAVIT."

Affidavit.

United States Circuit Court, Southern District of Ohio, Western
Division.

EMILIE SAXLEHNER

vs.

W. T. WAGNER'S SONS.

CITY OF ST. LOUIS,

Eastern District of Missouri, ss:

Enno Sander, being duly sworn, deposes and says: I have heretofore made an affidavit in this case. Until about two years ago I have been manufacturing a laxative mineral water under the name of Hunyadi Janos, which was prepared after the analysis of Justus von Liebig, as published on the labels of Andreas Saxlehner's Hunyadi Janos water. But after I was notified that Saxlehner claimed trademark rights in said name I have ceased to use the same, and have instead of said water manufactured a laxative water to which I have given the title or name "Relief." If I have omitted this statement in the affidavit heretofore signed by me, I certainly mentioned it in the letter which I sent with it to defendants or their attorneys. I have never intended to violate the proprietary rights of the complainant in the names "Hunyadi Janos" or "Hun-
86 yadi," and have no intention to do so in the future.

ENNO SANDER.

Sworn to before me this 28th day of March, 1901.

[SEAL.]

FERD. DIEHM,

Notary Public.

My commission exp. Dec. 8, 1901.

Filed March 30, 1901.

(Here follow facsimile of labels.)

87 Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity. No. 5498.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

Answer.

The Joint and Several Answers of Edward Wagner, William Wagner,
and Sophia Wagner to the Amended Bill of Complaint.

These defendants now and at all times, saving and reserving unto themselves all benefit and advantage of exception which can or may be made to the many errors, uncertainties and other imperfections in the said complainant's amended bill contained for answer thereto, or unto so much and such parts thereof as these defendants are advised is material or necessary for them to make answer unto, answering saith:

1. They admit on information and belief the allegations contained in the amended bill of complaint from clause 1 to 8 inclusive, except the statement in the last paragraph of clause 7, that the complainant's natural bitter water was known by the short term "Hunyadi" up to the present time, which allegation is denied.

2. These defendants say that prior to the filing of this suit they had placed labels upon their bottles reading, "W. T. Wagner's Sons Artificial Hunyadi Janos," and had printed price-lists containing the words "Hunyadi Janos," but say that prior to the bringing of this suit their labels were changed to read "W. T. Wagner's Sons

Carbonated Artificial Hunyadi, Conforming to the Fresenius
88 Analysis of the Hunyadi Janos Springs," and that prior to the bringing of this suit they discarded the price-lists containing the words "Hunyadi Janos" and used simply the word "Hunyadi."

3. These defendants further answering on information and belief, deny that Andreas Saxlehner, or his successor, the complainant herein, ever had any valid trade-mark in the words Hunyadi Janos, either applied to the springs of Andreas Saxlehner at Budapesth, or to any other Hungarian Bitter Water. Deny that complainant, or her predecessor, ever had any exclusive right, either in Hungary or this country to the use of either "Hunyadi" or the word "Janos" as applied to the bitter waters coming from complainant's springs at Budapesth, but on the contrary, say that the registration of said trade-marks for Hunyadi and for Janos were obtained by fraud and false statements, in the Patent Office of the United States.

4. And these defendants further answering on information and belief, allege that long prior to the time Andreas Saxlehner introduced natural bitter water from Hungary into the United States,

that artificial Hunyadi Janos and other artificial mineral waters had been manufactured and sold extensively in this country, which use was known amongst others to Dr. Enos Sander, who manufactured said water, and who then, and still, resides in the City of St. Louis, and who continued to manufacture, advertise and sell artificial Hunyadi up to a recent date.

5. These defendants further answering on information and belief, allege that long prior to the time Andreas Saxlehner introduced his Natural Hunyadi Water into this country and up to the present time, artificial Hunyadi Janos and artificial Hunyadi were manufactured in large quantities and sold in Hungary, Germany, and other foreign countries, and are still so sold, of which facts Andreas Saxlehner, and the complainant herein, had full knowledge.

6. And these defendants further answering on information and belief, say that the word "Hunyadi" means "of Hunyad," a name which is given to certain towns and districts of Hungary, that the name Hunyadi as applied to natural waters in Hungary did not imply that they came from these aforesaid districts and towns, but that it was applied to natural waters irrespective of the fact of whether or not they came from these districts, and that the word "Hunyadi" became public property both in Hungary and the United States long prior to the date at which this suit was brought.

89 7. These defendants deny that the complainants have in common with other owners of springs in Hungary a right to have the defendants enjoined from the use of the words Hunyadi in the manner in which they have used it; deny that they have sold their water as that of the complainant's; deny that they have sold it as the complainant's water artificially carbonated; deny that they have in any manner infringed upon the rights of the complainant as charged in said amended bill of complaint; deny that complainant has any right to further answer to said amended bill of complaint; deny that plaintiff is entitled to any injunction, account, damages or any other relief whatsoever, without this, that any other matter, cause or thing in said complainant's amended bill of complaint contained, material or necessary to be answered unto and not hereby well and sufficiently answered, confessed, traversed and avoided or denied is true, to the knowledge or belief of these defendants, and submit for the reasons hereinbefore recited and set forth that the complainant is not entitled to any relief whatsoever against these defendants.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove as this Honorable Court shall direct, and therefore, pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed)

EDWARD WAGNER,
MURRAY & MURRAY,
Solicitors and Counsel for Defendants.

County of Hamilton, ss:

EDWARD WAGNER.

Notary Public, Hamilton County, Ohio.

In Equity. No. 5498.

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EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

Notice.

Solicitor for Defendants.

Solicitors for Complainant.

91 Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity. No. 5498.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAGNER,
Defendants.

Testimony.

Evidence for final hearing on the part of the defendants taken under the 67th Rule of Equity as amended, before Casper W. Miles, a Notary Public in and for the County of Hamilton and State of Ohio, and special Examiner by consent of parties, at the office of Walter F. Murray, 28 Wiggins Block, Cincinnati, Ohio, upon the 13th day of December, 1904, pursuant to the annexed notice:

Present: Walter F. Murray, Esquire, counsel for defendants; Otto V. Schrenk, Esquire, of counsel for complainant, and C. W. Miles, Notary.

Wilhelm Bodemann.

WILHELM BODEMANN, a witness called upon behalf of the defendants, first having been duly sworn, testifies as follows:

Q. 1. State your name, age, residence and occupation.

Counsel for complainant objects to the testimony of this witness on the ground that the same is not properly taken under the notice hereto annexed, said notice not providing for the taking of testimony in accordance with the Revised Statutes of the United States or under the rules of this Court, nor before the proper officer, as provided by said Statutes and Rules.

92 A. Wilhelm Bodemann; age, 58 years; residence, Chicago, Illinois; druggist.

Q. 2. For how many years have you been a druggist?

A. Since '63 continuously.

Q. 3. With what institutions in the line of your profession have you been connected?

A. I have been for six years and am now a member of the State Board of Pharmacy. I have been for eight years and am now Inspector of Medical Supplies for the United States Indian Department. I have been for twenty years and am now a member of the Illinois Pharmaceutical Association. I have been for eighteen years and am now a member of the Executive Committee of Northwestern University School of Pharmacy.

Q. 4. When did you first see the term "Hunyadi," and in what manner was it used?

A. In 1867, on a label for mineral water manufactured by Moench & Reinhold.

Q. 5. What did this label say, as near as you remember?

Objected to as incompetent and calling for secondary evidence.

A. It gave the name "Hunyadi Bitter Water" and gave the name and address of the firm manufacturing it.

Q. 6. In what year did you start to work for the firm of Moench & Reinhold?

A. Began in October, '67; left in April, '69.

Q. 7. Were they manufacturing this Hunyadi and using this label at the time you went to work for them?

A. They did.

Q. 8. For how long a period did they continue to manufacture it, and use the label?

A. To my knowledge, from 1867 till the time of the big fire, in '71.

Q. 9. Had you learned of any other Hunyadi prior to that time?

A. I have not.

Q. 10. From what source was the formulæ for manufacturing this water procured?

A. I have no positive knowledge of that source.

Q. 11. Answer the question as near as you can.

Objected to as incompetent, as the witness has stated that he has no knowledge.

93 A. Mr. Reinhold had an extensive library on analyses of mineral waters, and was a subscriber to a great many foreign journals, and made many mineral waters after special formulæ furnished by German doctors practicing in Chicago.

Q. 12. As a pharmacist, do you know whether or not druggists formerly made a practice of preparing Hunyadi themselves?

Objected to as incompetent in so far as it does not call for the actual knowledge of the witness of the matters inquired about.

A. At the time I worked for Moench & Reinhold, they were the only ones, to my knowledge, that made Hunyadi water. When I was in business for myself, beginning in 1869, I have made it myself, on various occasions, from formulæ given me by respective physicians.

Q. 13. What were the reasons for these physicians asking you to prepare Hunyadi?

Objected to as incompetent, irrelevant and immaterial.

A. They prescribe it just like any other medicine.

Q. 14. Why did they not tell their patients to take a natural Hunyadi?

Same objections.

A. They were not to be had in this country just then.

Q. 15. With how many different Hunyadis called Natural have you been acquainted?

A. I only saw that term on the so-called Hunyadi Janos Water, as far as I recollect.

Q. 16. Have you never handled any other water but the Hunyadi Janos Water?

Objected to, as already answered.

A. I have handled the Hunyadi water manufactured by Moeneh & Reinhold and by myself, and a so-called Hunyadi Matyas, Hunyadi Geyza, and I have seen the Lajos.

Q. 17. Have you had any experience with the Natural Waters and with the Artificial Waters in use?

A. I have taken the Janos and the Geyza myself.

Q. 18. What is your experience as to the character of the Hunyadi Janos as to uniformity?

94 Objected to as incompetent and indefinite.

A. I found the Geyza more uniform than the so-called Hunyadi Janos.

Q. 19. To what do you attribute the lack of uniformity in the Hunyadi Janos Waters?

Same objection.

A. A dry or a wet season, as is recognized by all chemists, will influence all Natural Waters as to the character of their mineral ingredients.

Q. 20. Will you explain to a greater extent what you mean by "influencing the character of their mineral ingredients"?

Objected to as incompetent, as the witness has not been shown to be properly qualified to answer such questions.

A. It is a well-known fact that so-called Lithia Waters drawn at different seasons of the year contain not even a trace of Lithia, except the name, in the water. At other times they do contain variable quantities of Lithia. And the same rule applies to other natural Springs.

Q. 21. What is your opinion as to the value of natural mineral waters and artificial waters, honestly prepared according to the analyses of the natural waters? And you may state your reasons for any opinion you may express.

Same objections, and as immaterial and irrelevant.

A. If uniformity is preferred, then the artificial water fills the bill; the natural don't. That is my reason for the preference.

Q. 22. You are of the opinion, then, that a natural water can be produced artificially?

Same objections as to last question.

A. Most decidedly.

Q. 23. Do the majority of so-called natural mineral waters publish their analyses?

A. They do, and they differ at different times of the season.

Q. 24. Do you mean that the analyses differ, or their ingredients differ, at different times of the season, or both?

95 A. A correct analysis must indicate different ingredients at different seasons of the year, or it would not be a true analysis.

The answer is objected to as not stating facts, but the conclusions of the witness.

Q. 25. What is meant by the term "Hunyadi"?

Objected to as incompetent, immaterial and irrelevant.

A. A laxative bitter water.

Q. 26. Would you term any laxative bitter water a "Hunyadi"?

A. I would term only that bitter water a Hunyadi water that conformed to an analysis of the Hunyadi waters.

Q. 27. By the Hunyadi waters, do you mean the natural Hunyadi waters?

Objected to as leading.

A. I know of only one Hunyadi water that is called natural; the others do not have that name.

Q. 28. What is that?

A. Hunyadi Janos.

Q. 29. State whether or not the labels, advertisements, etc., of the Hunyadi Janos which you have seen all contain the word "Natural"?

Objected to as incompetent and calling for secondary evidence.

A. I have noticed the word "Natural" on the Hunyadi Janos label only within the last few years.

Cross-examination by Mr. SCHRENK:

X Q. 30. Are you a physician?

A. No, sir.

X Q. 31. In what capacity were you in the employ of Moench & Reinhold, from 1864 to 1867?

A. I worked for Moench & Reinhold from October, 1867, to April, 1869, in the capacity of a clerk.

X Q. 32. What was your occupation before you were with Moench & Reinhold?

A. I clerked as a druggist for Schorse & Mieding, in Milwaukee, from May, '67, to October, '67, and served my apprenticeship in Germany.

X Q. 33. Were you in any way connected with Moench & Reinhold from 1869, after you state that you left their employ, until the fire in 1871.

A. I very often did relief work for them.

X Q. 34. About how often during that time?

A. I couldn't tell that.

X Q. 35. Was it once a month, or more frequently.

A. No stated term, depending on the sickness of a member of the firm or absence from the city.

X Q. 36. During that period, did you work for them more than about five or six times?

A. I did.

X Q. 37. Did you work more frequently than ten times?

A. More than that.

X Q. 38. Can you say approximately how often?

A. During the summer time I often worked every other evening for them.

X Q. 39. But you cannot state definitely how often you worked for them?

A. No, sir.

X Q. 40. Were you a witness on behalf of the defendant in a suit brought in this court at Chicago by Emilie Saxlehner, the present complainant, against William T. Thackeray, said suit being brought in the United States Court of the Northern District of Illinois?

A. I was.

X Q. 41. That suit was brought to restrain the sale of a certain article named Hunyadi Geyza, was it not?

A. That was my understanding.

X Q. 42. Are you aware of the fact that by a decision of the Circuit Court of Appeals in said suit, the defendant was restrained from selling such Hunyadi Geyza?

A. I received a copy of that decision.

X Q. 43. Was that Hunyadi Geyza a natural or an artificial water?

A. An artificial water.

X Q. 44. During your examination as a witness in that suit, you testify that you made some Hunyadi water in 1868 and 1869, in answer to a question in which you were asked to state when you first began the sale of Hunyadi Janos water here. In answer to question

8 in the present examination you stated Hunyadi water was
97 manufactured while you were at Moench & Reinhold's, from 1867 until the time of the big fire in 1871. Will you now please state why you have changed your testimony in this respect.

Objected to by counsel for defendant, unless the witness is shown the question and answer.

Complainant's counsel, in view of the objection just noted, here reads to the witness question and answer 13 as given in the suit of Saxlehner vs. Thackeray, as heretofore noted.

A. I believe I testified then distinctly that we did not call that water Hunyadi Janos, but simply Hunyadi. I stated then, as I state now, that I called it Hunyadi water.

X Q. 45. But in the former examination you distinctly testified, "We made some Hunyadi water, to the best of my knowledge, in 1868 and 1869, and sold it." While in your present examination you have sworn that you continued to manufacture and sell Hunyadi water from 1867 till the time of the big fire in 1871, and I therefore again ask you why you testify differently at the present time?

The question is objected to as being a mis-statement of the witness' testimony. He said that to the best of his knowledge it was in 1868.

A. I testified at that time because my regular employment as clerk ended in 1869; later on I was not employed as regular clerk.

X Q. 46. Is that the only explanation you have to make as to the discrepancy in the dates?

A. It is.

X Q. 47. In your previous examination in the suit against Thackery you were asked, "What formula was followed in manufacturing this so-called Hunyadi Janos water?" and your answer was, "That I couldn't tell you; Mr. Reinhold mixed the solutions." Is that still your testimony on this point?

A. I testified this time that I didn't know the formula, and add now that Mr. Reinhold did mix the solutions, as testified to before.

X Q. 48. Is the Hunyadi Janos bottled and sold by the complainant, Emilie Saxlehner, a Lithia water?

A. It is not.

X Q. 49. In what bottles was the genuine Hunyadi Janos
98 water sold in this country at the time when the firm of Moench & Reinhold manufactured an artificial water and sold it under the name Hunyadi?

A. I did not see a bottle of the natural Hunyadi Janos water until 1875 or 1876.

X Q. 50. Do you mean to testify that the firm of Moench & Reinhold did not have and sell any Hunyadi Janos during the time that you were in their employ?

A. They had none but their own.

X Q. 51. And you assisted in the manufacture of an artificial Hunyadi without ever having seen the genuine Hunyadi Janos water?

A. I did.

X Q. 52. Do you know what the ingredients of this artificial Hunyadi were?

A. I do.

X Q. 53. How could you know it if you state that Mr. Reinhold mixed the ingredients that were used in the manufacture of this artificial Hunyadi water?

A. I saw the formula in his book, and he gave it to me.

X Q. 54. In what book did he have this formula?

A. Written by himself.

X Q. 55. When did you see it?

A. During the time that I worked for him, and later on when he gave me a copy.

X Q. 56. If you knew these facts, as you now testify, why did you testify in your previous examination as follows: "What formula was followed in manufacturing this so-called Hunyadi water?" Answer: "That I couldn't tell you. Mr. Reinhold made the solutions." And further: Q: "Don't you know what you mixed it with?" Answer: "No, sir"?

A. By that I meant that I did not know whose formula he followed. Because there were at that time different formulae published by different chemists and different journals.

X Q. 57. At that time you swore positively that you did not know what he mixed it with, while in your present examination you have sworn that you do know what he mixed it with. Did you know it then, or don't you know it now?

Objected to unless the question and answer are shown the witness.

A. When he first mixed it he did not show me the formula, but he did so later on.

99 X Q. 58. Then your previous testimony is incorrect when it states that you did know what he mixed it with, is it not?

A. I state now that at the time he first mixed it he did not show me the formula, but he did so later on.

X Q. 59. Did you personally at any time while you were at the place of Moench & Reinhold mix the ingredients and put up the so-called Hunyadi water sold by that term?

A. I don't remember that I ever mixed it myself, but I do remember that I bottled the finished product and labeled it. It was a carbonated water, and on several occasions I burst the bottle in corking it, and cut my fingers.

X Q. 60. Your correct testimony therefore is now, that you have no personal knowledge as to what the ingredients of this so-called Hunyadi made by the firm of Moench & Reinhold were, but that you at one time saw a certain analysis of Hunyadi Janos water in the handwriting of Mr. Reinhold in a book kept by him. Is that correct?

A. It is not. He called it Hunyadi, not Hunyadi Janos.

X Q. 61. Otherwise the facts as stated in my question are correct?

A. They are.

X Q. 62. Am I to understand you then that the analysis which you saw in the book of Mr. Reinhold purported to be an analysis of Hunyadi water only?

A. That was all we knew at that time.

X Q. 63. Now, please state more definitely what was contained on the label under which this so-called artificial Hunyadi was then sold by Moench & Reinhold.

A. They contained the name Hunyadi and the address and name of the firm, and sometimes they put labels on the bottles calling it Hunyadi Bitter Water.

X Q. 64. What size label was it?

A. A narrow-strip label.

X Q. 65. Then the word "Hunyadi," as I understand it, did not have the suffix "Janos" or any other suffix?

A. Sometimes Bitter Water, not any other suffix.

X Q. 66. When did you see a bottle of the natural Hunyadi Janos water in this country for the first time?

A. Eighteen seventy-five or 1876, around that time.

X Q. 67. Did you ever see the Hunyadi Janos water in this country under a red and white label?

A. I believe the first bottles came out that way. Then there came a bottle with a diamond-shaped label.

100 X Q. 68. Then your recollection now is that the first bottle of Hunyadi Janos that you ever saw was provided with a label having a red center-panel and two white side-panels?

A. It is a dim recollection that I have about that. I paid little attention to it until the trade was flooded with circulars calling attention to a controversy about the Hunyadi water.

X Q. 69. Has your recollection as to the Hunyadi Janos water

been freshened since the present suit and the suit against Thackeray was brought?

A. Not very much.

X Q. 70. But you think you remember now, do you, that the first bottles of Hunyadi Janos that you saw had the red and white label, and that shortly thereafter they were provided with a red and blue label?

A. My recollection is dim as to that, because I saw Hunyadi water that was brought over by people who had visited in Europe, and to the best of my knowledge I noticed that it looked different from the water we sold here under the name of Hunyadi Janos.

X Q. 71. Where was your drug store in 1875 or 1876, when, you state, that you first saw Hunyadi Janos?

A. Corner State and Jackson, Chicago.

X Q. 72. And how long did you continue at that place?

A. Until 1892.

X Q. 73. When did you first sell or handle Hunyadi Janos with a red and blue label?

A. I think it was in '75 or '76.

X Q. 74. From whom did you get it?

A. From local jobbers in Chicago.

X Q. 75. And who were those jobbers?

A. Fuller & Fuller; Morison & Plummer; Peter Van Schaack & son, or their predecessors.

X Q. 76. Did these jobbers have the Hunyadi Janos in stock at that time?

A. They did.

X Q. 77. During the years 1867 to 1876, did you live continuously at Chicago?

A. I did.

X Q. 78. Were you ever away from Chicago during that period?

A. Temporarily.

X Q. 79. Where?

A. Vacation trips. Never changed my business. Never over two weeks.

X Q. 80. Did you go to New York during that time?

101 A. No, sir.

X Q. 81. You have stated that you saw bottles of Hunyadi Janos which had been brought from Europe. When might that have been?

A. About '75 or '76.

X Q. 82. And after 1875 or 1876, did you continue to sell Hunyadi Janos regularly?

A. I did, to the present time.

X Q. 83. State who imported the Hunyadi Janos water in or about the years 1875 or 1876, or thereafter, if you know?

A. I don't know.

X Q. 84. Did you not know the Apollonaris Company imported Hunyadi Janos into the United States during that time?

A. To the best of my recollection it was after '75 that my attention was called to that fact.

X Q. 85. When, then, did you first learn that the Apollonaris Company was importing Hunyadi Janos into this country?

A. I couldn't tell that.

X Q. 86. At that time that you first handled and sold Hunyadi Janos at your store in Chicago, was there any other water on the market here bearing the name Hunyadi?

A. Not that I recollect. As far as I remember, the Matyas, Arpad, and Lajos came later than '75 and '76.

X Q. 87. Did you, after 1876, sell or handle any artificial water which was called Hunyadi Janos?

A. No.

X Q. 88. Did you, after 1876, sell or handle any such artificial water which was called Hunyadi?

A. I did sell Hunyadi Geyza.

X Q. 89. That was quite recently, was it not?

A. Three or two years ago we ceased selling that Geyza water.

X Q. 90. And for how long a period did you sell the Geyza?

A. Perhaps four or five years; I am not sure.

X Q. 91. That is the same Hunyadi Geyza the sale of which has been enjoined by the Circuit Court of Appeals in Chicago, is it not?

A. Yes.

X Q. 92. Other than this Hunyadi Geyza you never have seen any artificial water called Hunyadi, have you?

A. Not until yesterday.

X Q. 93. What did you see yesterday?

102 A. A water manufactured at W. T. Wagner's Sons. An effervescent water.

X Q. 94. And previous to yesterday you had never seen that water, had you?

A. I had not.

X Q. 95. This and the Hunyadi Geyza are the only artificial waters bearing the name Hunyadi which you have seen?

A. The only ones.

X Q. 96. In what kind of bottle was the Hunyadi Janos water sold when you first had it, in this country?

A. According to my recollection, the bottle was very much like this one marked "One." The color was browner—of the glass, I mean.

The bottle referred to by the witness is offered in evidence. The notary is requested to mark it "Defendants' exhibit, Complainant's Bottle No. 1."

Recess until 2 P. M.

X Q. 97. Was the bottle of the same size as the exhibit?

A. Practically, yes.

X Q. 98. Was the neck the same length as in the exhibit?

A. I think so.

X Q. 99. Was the body of the same size.

A. About the same. I believe it measured 24 ounces—a pint and a half.

X Q. 100. Have you ever heard of a natural mineral water called Friedrichshall water?

Objected to as matters not brought out in direct examination.

A. I have.

X Q. 101. When did you first see such a bottle?

A. In '67.

X Q. 102. Did it have the name "Friedrichshall" on the label?

A. Yes.

X Q. 103. Was this a natural or an artificial water?

A. Natural.

X Q. 104. Was it a laxative bitter water?

A. Yes, sir.

103 X Q. 104a. Was it known as Hunyadi water?

A. No, sir.

X Q. 105. Was this water dealt in by the firm of Moench & Reinhold at the time you were in their employ?

A. Yes, sir.

X Q. 106. And you know of its having been sold continuously since that time?

A. Not continuously. Lately we don't sell it at all.

X Q. 107. But for some time it was regularly sold, was it not?

A. It was.

X Q. 108. Was it sold as Friedrichshall water or as Hunyadi water?

A. Friedrichshall water.

X Q. 109. Did the firm of Moench & Reinhold manufacture an artificial Friedrichshall water?

A. They did.

X Q. 110. Did they make up all the known bitter waters artificially and sell them?

A. I can name Puellna, Kruczna, Marienbad, Carlsbad, Naumburg, Ems Kraenchen.

X Q. 111. And all these waters were artificial imitations of the waters of certain well-known natural springs, or wells, were they not, made after the formula of those natural waters?

A. Most of them effervescent; some of them mineral waters known under the name of "still."

X Q. 112. You mean that these artificial waters were made according to the composition, or analysis, of the natural spring waters whose names they bore?

A. That is my understanding.

X Q. 113. That was the general practice of your firm, was it not?

A. It was.

X Q. 114. If they called a bottle of such artificial water Carlsbad, or Carlsbad Water, that was meant to say that the water was made according to the analysis, or composition, of a Carlsbad Spring, was it not?

A. That was the understanding.

X Q. 115. Do you know how Mr. Reinhold got the formula for the Hunyadi water?

A. I do not.

X Q. 116. Do you remember what kind of a label was contained on the bottle of Friedrichshall water?

104 Objected to as matters not brought out in direct examination, and, to save time, counsel will enter a general objection to questions of this character.

A. If I remember right, it was black print, black paper, didn't go near as far around the bottle as this did; about half way round. [Indicating about four inches.]

(During the last answer the witness referred to the exhibit, Defendants' Exhibit, Complainant's Bottle No. 1.)

X Q. 117. Do you know what the composition of the Friedrichshall water is?

A. In a general way, yes.

X Q. 118. Please state it as near as you can.

A. It contains mostly epsom salt, glauber salt, and ordinary table salt, or, if you want the chemical names, sulphate magnesia, sulphate of sodium, chloride of sodium.

X Q. 119. Which of these are the chief constituents of Friedrichshall water?

A. Epsom salt, I think—sulphate magnesia.

X Q. 120. How about the sulphate of sodium? Is that not also present in large quantities?

A. Yes.

X Q. 121. These two are the most active aperients in it, are they not?

A. In addition to the chloride of sodium, yes. My recollection is that the chloride of sodium is present in the Friedrichshall to a larger extent than in most of the other bitter waters.

X Q. 122. These three substances are also the active aperients contained in the Hunyadi water, are they not?

A. They are.

X Q. 123. Do you know of any striking or particular difference in composition of the Friedrichshall water and Hunyadi Janos?

A. The Friedrichshall has a saltier taste, due to the larger amount of chloride of sodium present.

X Q. 124. But otherwise they are quite similar to one another, are they not?

A. Very much so.

X Q. 125. Are they so recognized by the profession?

A. They are.

X Q. 126. Can you state which of these two is the stronger water?

105 A. They are taken in about the same dose, but the Friedrichshall tastes the stronger on account of the chloride of sodium.

X Q. 127. Are they similar in effect?

A. Very much so.

X Q. 128. Has the Friedrichshall bitter water ever been called Hunyadi in this country?

A. Not to my knowledge.

X Q. 129. How is it called?

A. Friedrichshall Bitter Water.

X Q. 130. If I went to your drug store and asked for a bottle of Hunyadi, would you give me a bottle of Friedrichshall?

A. No, sir.

X Q. 131. Which of these two waters, the Hunyadi Janos and the Friedrichshall, has the greater reputation in this country?

A. Friedrichshall has had a better reputation than Hunyadi; Hunyadi now has the greater reputation.

X Q. 132. How long has the Hunyadi Janos had the greater reputation?

A. I should say about ten years.

X Q. 133. Has it been more largely advertised than the Friedrichshall?

A. Decidedly so. Both by the natural and the makers of artificial.

X Q. 134. Is there any artificial Hunyadi Janos manufactured in his country?

A. I understand that Wagner's Sons made it, and Dr. Sander, in St. Louis.

X Q. 135. In one of my last preceding questions I asked whether the Hunyadi Janos or the Friedrichshall were advertised more. And in your answer you refer to the artificial Hunyadi Janos. Did you understand the question, and do you wish to correct your answer if you did not?

A. The natural Hunyadi water has been more largely advertised than the Friedrichshall.

X Q. 136. Has the natural Hunyadi Janos been more extensively introduced than the Friedrichshall?

A. If by introducing you mean advertising, yes.

X Q. 137. Do you know if the Friedrichshall is still on sale in this country?

A. In my own case, I can say that the sale of Friedrichshall has fallen off remarkably.

X Q. 138. But it is still on sale in this country, is it not?

106 A. Yes.

X Q. 139. Do you know whether the artificial Hunyadi water which Moench & Reinhold sold in Chicago when you were in their employ, or working for them, was sold by or under a license or with the consent of Andreas Saxlehner, who then owned the natural Hunyadi Janos Springs?

A. I did not know Andreas Saxlehner by name at that time.

X Q. 140. Do you know a bitter water called "Rubinat"?

Objected to by counsel for defendant as being matters not brought out in the direct examination, and counsel is cautioned that if he proceeds on this line of examination he makes the witness his own.

A. I do.

X Q. 141. Is that a laxative bitter water?

A. It is.

X Q. 142. Do you call that a Hunyadi water?

A. No, sir.

X Q. 143. Have you known that Rubinat was sold in this country?

A. I have sold it myself.

X Q. 144. Have you heard of a bitter water called "Relief," put up and sold by Dr. Enno Sander of St. Louis?

A. I have not.

X Q. 145. If I were to go to your drug store and ask for a bottle of Hunyadi water, what would you give me?

A. Hunyadi Janos is the only kind I have on sale.

X Q. 146. If you had Rubinat on sale, would you give me that in answer to my demand for Hunyadi?

A. No.

X Q. 147. Do you know what the analysis of the so-called Hunyadi water, put up and sold by the defendants in this case, is?

A. I believe they showed me the formula yesterday. I believe it is on the label.

X Q. 148. Had you ever seen it before yesterday?

A. If it refers to the label, yes; I saw it in the advertising matter.

X Q. 149. Can you refer me to any standard publication which contains a published formula of that water? That is, the water manufactured by the defendants and sold under the name Hunyadi?

A. I have, but not in the figures given, as on this label.
107 The Standard Formulary has this formula in proportion of gallons instead of hundred-thousand parts. The Standard Formulary is a book of formulas, compiled by Albert E. Ebert and Albert E. Hiss, published by G. P. Engelhard & Co.

X Q. 150. Is the formula in that publication therein contained the formula of natural Hunyadi Janos?

A. It is like some of the formulae of the natural Hunyadi waters that I have seen.

X Q. 151. You have, then, seen different analyses of natural Hunyadi waters?

A. I have.

X Q. 152. Under what name is the formula contained in the publication mentioned in your answer to question 149?

A. Hunyadi Janos, if I remember right.

X Q. 153. Then this publication, as I understand it, contains the name Hunyadi Janos, and following it the analysis to which you have referred? Is that correct?

A. Yes.

X Q. 154. Have you ever analyzed the natural Hunyadi waters?

A. Never.

X Q. 155. Have you ever analyzed the water put up and sold by the defendants under the name of Hunyadi?

A. I never saw it until yesterday.

X Q. 156. Have you ever sold in this country a bitter water under the name of Ofen Bitter Water?

A. I have.

Same objection.

X Q. 157. Is that a laxative bitter water?

A. It is.

X Q. 158. It is similar in composition to the natural Hunyadi Janos water?

A. I don't really know that.

X Q. 159. Is it sold as Hunyadi water?

A. The only kind that I have sold was made by Moench & Reinhold.

X Q. 160. Did you sell it as Hunyadi?

A. No.

X Q. 161. Was there a natural Ofen Bitter Water on the market at that time?

A. Not to my knowledge.

X Q. 162. Was the natural water sold in Chicago after 1871 under the name of Ofen Bitter Water?

108 A. Not by myself.

X Q. 163. Was it sold by others?

A. I can't vouch for it; I have heard it stated.

X Q. 164. If you had Ofen Bitter Water in stock to-day, would you sell that as Hunyadi water?

A. I wouldn't think of it.

X Q. 165. When you stated in your direct examination that you understood the term "Hunyadi" to mean a laxative bitter water, you meant that in the sense that Hunyadi is a medicinal water, which accomplished the purposes of a laxative bitter water, but you did not mean to imply that every laxative bitter water was Hunyadi water, did you?

A. No.

X Q. 166. Is it not a fact that analyses of natural mineral waters prepared by different persons produce different results?

A. The analysis of different mineral waters must be different according to the seasons of the year in which the water has been drawn from the natural spring, and, therefore, the result must be different, inasmuch as natural waters are not a tangible quantity.

X Q. 167. Is it not also a fact that analyses of natural mineral waters, as published from time to time in different publications by different chemists, have shown different results as to the same water?

A. They are bound to, inasmuch as the water itself differs.

X Q. 168. Then if a natural water is reproduced artificially, it can at most be made in accordance with one or the other of these different analyses. Is this not correct?

A. No, sir. I know that Mr. Reinhold was in the habit of preparing from six to twelve different analyses made and published by different chemists, and then made up his own average, normal formula.

X Q. 169. Have you personally ever analyzed any natural bitter water?

A. No, sir.

X Q. 170. Then you have never compared a natural mineral water with an artificially prepared water of the same kind, have not?

A. I have.

X Q. 171. How could that be done?

109 A. The eating of a pudding is the proof of it. I have taken them both, and I had results from the artificial where I didn't from the natural.

X Q. 172. When did you come to this country, Mr. Bodemann?

A. In March, 1867.

X Q. 173. Where were you living before that?

A. Bremerhaven.

X Q. 174. Did you live there continuously?

A. I lived at Bremerhaven, Hamburg, and Hanover.

X Q. 175. Did you study in Germany.

A. I did.

X Q. 176. Where?

A. Bremerhaven, Hanover, and Hamburg.

X Q. 177. Did you study pharmacy in Germany?

A. I did.

X Q. 178. Was the artificial Hunyadi manufactured by Moench & Reinhold carbonized?

A. No, sir.

X Q. 179. Was it carbonated?

A. Yes.

X Q. 180. Why?

A. They made all their waters carbonated except by special order.

X Q. 181. Why was it carbonated?

A. I guess they wanted it that way.

X Q. 182. You do not know the reason, however, do you, other than that which you have just given?

A. Yes, sir. Certain salts are more soluble in the presence of carbonic acid than without.

X Q. 183. Then I understand that if this carbonic acid had not been added the salts would not have been properly dissolved. Is that correct?

A. The solutions for these artificial waters in some cases could only be prepared by the addition of free carbonic acid, as in the case of carbonate of calcium and carbonate of lithia.

X Q. 184. If I should take the chemicals named in the analysis appearing in the label of the water prepared by the defendants under the name Hunyadi, in the exact quantities as enumerated in the said analysis, and dump them into distilled water, would I obtain a mineral water like Hunyadi Janos?

A. In my opinion you have to have carbonic acid present.

110 X Q. 185. Will you please answer my last question yes or no?

A. I think carbonic acid makes it more readily soluble.

X Q. 186. I have asked you nothing whatever about carbonic acid, and request you to answer my question without the addition of anything else than what is there enumerated.

A. It would dissolve.

X Q. 186a. Then it is your testimony that if the substances as named in this analysis were put into water without the addition of any other substance, gas, or element whatever, they would all dissolve?

A. Yes, they would.

X Q. 187. And there would be no deposit in the receptacle?

A. No, sir.

X Q. 188. Then carbonic acid is not necessary?

A. It is not.

X Q. 189. Why, then, was it added by Moench & Reinhold?

A. To make it effervescent.

Redirect examination:

R. D. Q. 190. In your direct examination you state that Moench & Reinhold manufactured artificial Hunyadi in 1867. In the cross-examination your attention was called to the fact that in a former case you had testified that, to the best of your knowledge, it was in 1868 and '69. Will you explain this apparent discrepancy?

A. I came to Moench & Reinhold almost at the end of the year '67. That is my explanation why I didn't think to mention the tail end of '67.

R. D. Q. 191. Why did Moench & Reinhold cease to manufacture Hunyadi in 1871?

A. They lost everything they had, in the big fire of that year, and died soon after.

R. D. Q. 192. Was this firm known to be manufacturers of mineral waters?

A. They were.

R. D. Q. 193. You state that you remember the formula according to which this firm made their Hunyadi. Can you state it?

A. No, sir; I lost my formula book in the fire of '71.

R. D. Q. 194. Now, calling your attention to cross-question 111 No. 95, to what period of time were you referring in that answer?

A. The time referred to in question 95 refers to the time given in question 88, since 1876.

R. D. Q. 195. Could Friedrichshall be called Hunyadi? that is, does it differ in analysis from the Hunyadis as much as they differ from each other?

Objected to as incompetent and leading.

A. The difference between Friedrichshall and any of the Hunyadi waters is greater than the difference between any of the different Hunyadis.

R. D. Q. 196. If Hunyadi Janos contains any free carbonic acid gas, would the addition thereto of more of the same gas change the chemical character of the salts held in solution?

A. It would not.

Recross-examination:

R. X Q. 197. Do you know the analyses of any other Hunyadi waters; that is, natural Hunyadi waters coming from Hungary, other than Hunyadi Janos?

A. I have seen them at different times.

R. X Q. 198. Can you state now in what particulars any of such natural Hunyadis differ from Friedrichshall?

A. Friedrichshall contains more chloride of sodium.

R. X Q. 199. How much more?

A. I don't believe Hunyadi contains any.

R. X Q. 200. You are stating this from your general recollection?

A. From recollection.

R. X Q. 201. Can you swear positively that the addition of carbonic acid gas to the natural Hunyadi Janos water would not change the water in any manner?

A. It would not.

R. X Q. 202. Have you ever tried it?

A. No, sir. I know that from my knowledge as a chemist.

R. X Q. 203. Will you swear positively that you know the exact condition of the mineral salts as they are contained in solution in the natural Hunyadi Janos water?

A. I can swear most positively that when they are in solution they are dissolved.

112 R. X Q. 204. But can you also swear in what manner these various salts may be combined in such a solution?

A. The formula tells the story.

(Signed)

WILHELM F. BODEMANN.

Adjourned until 9 A. M., Wednesday, December 14th, 1904.

Met pursuant to adjournment.

Present: The counsel for the respective parties, and the Notary.

Charles T. P. Fennel.

CHARLES T. P. FENNEL, a witness produced upon behalf of the defendants, having been first duly sworn, deposes and says in answer to interrogatories by Mr. Murray as follows:

Q. 1. State your age, name, residence, and occupation?

Counsel for complainant objects to the testimony of this witness on the ground that the same is not properly taken under the notice hereto annexed, said notice not providing for the taking of testimony in accordance with the Revised Statutes of the United States or under the rules of this Court, nor before the proper officer, as provided by said statutes and rules.

By Mr. MURRAY: Yesterday you consented, did you not, Mr. Schrenk, to proceed before the Notary Public instead of going before the Court and having a Special Examiner appointed?

Counsel for complainant admits that, at the request of defendants' counsel, he consented to proceed with the examination yesterday before Casper W. Miles, Notary Public, instead of before the proper officer, as provided by the statutes and rules of this Court.

A. Name, Charles T. P. Fennel; age, fifty years; residence, Cincinnati, Ohio; pharmacist and chemist.

Q. 2. For how many years have you been a pharmacist and chemist, and with what institutions have you been associated as such?

A. I have been in the practical business since 1874. I
113 am a member of the Ohio State Pharmacy Association; was President of that Association; am a member of the American

Pharmaceutical Association. I was Chairman of the Scientific Section of that Association at World's Fair Congress, '93. I am a member of the American Chemical Society. I am a member of the Berlin Chemical Society since '89 or '90. I have been a member of the Cincinnati College of Pharmacy since '86. I have had the chair of Chemistry and Pharmacy since that time, and now have the chair of Chemistry, and graduated from that institution in '82. I was State Chemist for Ohio Food Department for seven years.

Q. 3. With what imported Hunyadiis have you become familiar in your business?

A. I have handled the Hunyadi Arpad, Matyas, Lajos and Janos.

Q. 4. Was there anything upon the labels or the bottles to indicate that these were natural Hunyadiis?

Objected to as incompetent and calling for secondary evidence.

A. They all indicated that they were natural; in fact they were specific about it, in so much that I very often wondered why they designated it Natural Water, the presumption being that these waters were bottled from water as it came from the springs.

Counsel for complainant objects to all that part of the answer of the witness commencing with and following "in so much," as not responsive to the question, and entirely volunteered, and gives notice that at the proper time motion will be made to cross that part of the answer from the record.

Q. 5. Can you produce some of the bottles of the waters to which you refer in your answer?

A. I can, and do.

The bottles referred to by the witness are offered in evidence, one of them being Defendants' Exhibit, Complainant's Bottle No. 1, and the Notary is requested to mark the others Defendants' Exhibit, Complainant's Bottle No. 2; the former, No. 1, being Hunyadi Janos with a red and blue label; No. 2 being a Hunyadi Janos with red and white label.

Defendants' Exhibit, Hunyadi Matyas Bottle; Hunyadi 114 Lajos Bottle, Defendants' Exhibit; and Defendants' Exhibit, Hunyadi Lajos Strip Bottle.

Complainant's counsel objects to the offering in evidence of these bottles as incompetent and not properly proven.

Q. 6. Are these the packages which you have handled in your business?

Objected to as leading.

A. They are.

Q. 7. Were these bottles received in this form, or did you have instructions to apply any other labels to them, from the owners of the springs, or the importers?

A. I can't say whether those who gave us instructions as to labels were the owners or the importers direct, but the fact remains that strip-labels were sent us with the request to place them on the stock received at the top of the label.

Q. 8. On which of the bottles were you requested to place a strip.

A. Upon the bottle designated as Lajos Strip Bottle.

Q. 9. Can you produce one of those strips?

A. Yes, sir.

The strip is offered in evidence, with the request that the Notary mark it "Defendants' Exhibit, Lajos Strip Label."

The offering in evidence of this label is objected to by complainant's counsel as immaterial and irrelevant.

Q. 10. Where did you obtain this strip?

A. With the receipt of goods, or shortly afterwards.

Q. 11. Are you familiar with the formulae of these imported Hunyadi's to which you have just referred?

A. I am acquainted with the analyses of these waters.

Q. 12. How closely do they resemble each other?

Objected to by complainant's counsel as incompetent and calling for secondary evidence.

A. They vary very largely in the percentage of component parts. They vary 100 per cent.

115 Q. 13. Are you familiar with the formulae of other natural bitter waters?

A. I am acquainted with the analyses of other bitter waters.

Q. 14. Have you been acquainted with the Hunyadi water manufactured by defendant, and if so, in what way?

A. I am acquainted with the Hunyadi water manufactured by the defendant, having made analyses of it, and also having sold it.

Q. 15. Are you familiar with any of the published analyses of Hunyadi Janos, and if so, with what ones?

A. I am acquainted with analyses of Hunyadi water by Fresenius, and others.

Q. 16. What was the result of your analysis of the defendants' Hunyadi water?

A. I found that the composition of the defendants' Hunyadi water corresponded to the analysis of Hunyadi Janos by Fresenius.

Q. 17. Have you in your business ever handled any other artificial Hunyadi than that of the defendants?

A. Yes, sir; I have.

Q. 18. Please state whose?

A. I handled and sold the Hunyadi Janos water manufactured by Enno Sander, of St. Louis; I have also sold artificial Hunyadi made by myself.

Q. 19. At what time did you handle the artificial Hunyadi Janos of Enno Sander, and you may state any particulars in connection with your starting to handle the same?

A. I commenced to handle Enno Sander's waters, not alone Hunyadi Janos, but Lithia water, Iron water, Carlsbad water, and others, in the latter part of 1888, '89, and probably 1890. The sale of these waters being mostly on prescription of physicians.

Q. 20. How did you become acquainted with Enno Sander's Hunyadi Janos?

Objected to as immaterial and irrelevant.

A. Dr. Enno Sander made a display here at our Centennial Exposition in 1888, and created a demand for his goods, and I took it up in a business way.

Q. 21. Can you produce a bottle of Enno Sander's Hunyadi Janos?

A. I brought a bottle along this morning.

116 The bottle referred to is offered in evidence, and the Notary will please mark the same "Defendants' Exhibit, Enno Sander's Hunyadi Janos."

Objected to by complainant's counsel as incompetent, immaterial and irrelevant, and as not properly proven.

Q. 22. Where did you obtain this bottle?

A. I resurrected it last night out of my cellar, Race and Garfield Place, out of old mineral water stock.

Q. 23. I notice that the label is torn. What part is torn out of there?

Objected to by complainant's counsel as incompetent and calling for testimony by the witness of the contents of a paper.

A. The label has the letter capital "I" upon the first line, followed by the word Janos," the upper left-hand corner of the label being torn off.

Q. 24. In what manner, if any, does this bottle and this label differ from the bottles of Hunyadi Janos of Enno Sander, which you say you handled in '88, through '90?

A. The question is a little ambiguous. Have you reference to the shape of the bottle, the contents of the bottle, or similar bottles?

Q. 25. I refer to the shape of the bottle, the style of the label used by Enno Sander upon his Hunyadi Janos Water which you handled in '88 through '90.

A. It shows no difference, coming from the same lot.

Q. 26. Have you, in the course of your business, had occasion to become acquainted with the condition of the imported Hunyadis, and particularly with the condition of the complainant's Hunyadi Janos, when opened here? And if so, explain the condition of the same.

Objected to as immaterial, irrelevant, and as leading.

A. All the Hunyadi waters, in general appearance, were not uniform; a large proportion of the waters containing suspended matter of organic origin, frequently producing disagreeable odors upon opening of the bottle.

Q. 27. Please state whether or not you have used the artificial water of the defendants, and the imported water of the complainant, and compare their results; and if you have any preference for one or the other, give your reasons for it.

A. The preference is in favor of the artificial water, for the reason explained in the previous answer—to question 26. I can say, in the general routine of business we have daily calls for a drink of

Hunyadi water; that we had been in the habit of giving a natural Hunyadi water, but so often flocculent matter having a very disagreeable appearance, sometimes large pieces, would be very objectionable to the consumer, and caused complaint, and placing the responsibility of deterioration upon us, that we made our own Hunyadi, according to Fresenius' analysis, and afterwards used defendants' water, on account of its clear, uniform appearance.

All that part of the answer of the witness after the first sentence is objected to by counsel for complainant as not responsive and volunteered, and gives notice that at the proper time a motion will be made to cross the same from the record.

Q. 28. When did you first prepare Hunyadi yourself, and what led you to do so?

Objected to by counsel for complainant as incompetent, immaterial, and irrelevant.

A. We first made artificial mineral waters at various times and within the time of my experience since 1865; led to that by the demand of physicians for the natural waters and our inability to supply that demand, we made the artificial product according to the analyses of recognized authorities furnished through the leading journals, German, English and French, but not American. I personally made Hunyadi as early as 1872.

The answer is objected to by counsel for complainant as largely volunteered, and not responsive; and the same notice is given as to the previous volunteer answers of this witness.

Q. 29. Why were you unable to supply the demand in '72 for Hunyadi?

A. In my answer in the previous question I had reference to all natural waters. The opportunities of getting them without importation, personally, were very limited, and we were compelled to supply the demand created through medical journals by making artificial waters. The local jobbers did not carry natural mineral waters in stock, and we purchased at a much later date our natural mineral waters through P. Scherer & Co., of New York, who did not carry any of the Hunyadis with the exception of Matyas, and that, I believe, was as late as 1886.

The answer of the witness is objected to by complainant's counsel as incompetent, immaterial, and irrelevant.

Q. 30. Can you produce any of the price-lists of that company?

A. The latest date that I have of their price-list is September 10, 1886.

Q. 31. Who was this P. Scherer Company?

Objected to as immaterial and irrelevant by complainant's counsel.

A. Importers and exporters. They had the reputation of carrying the largest variety of natural mineral waters, foreign and American.

Last sentence of the foregoing answer is objected to by complainant.

ant's counsel as not responsive, and volunteered; and the same notice is given as heretofore.

Q. 32. Where did you obtain this price-list?

A. That price-list was taken off my files.

The same is offered in evidence, and the Notary is requested to mark the same "Defendants' Exhibit, P. Scherer Company Price-List."

The offering in evidence of this paper by defendants' counsel is objected to by complainant's counsel as immaterial and irrelevant.

Q. 33. Is the defendants' Hunyadi a still or an effervescent water.

A. It is an effervescent water, a so-called carbonated water.

Q. 34. What causes the effervescence?

A. Free carbonic acid gas.

119 Q. 35. I hand you a bottle of defendants' water with a label thereon, containing an analysis by Fresenius, of the Hunyadi Janos Springs, and ask you whether or not the presence of free carbonic acid gas would effect those salts in solution?

A. The salts in solution are not affected by free carbonic acid gas.

Q. 36. Why?

A. The first substance, *per se*, is soluble in water; the second ingredient, *per se*, is soluble in water; the third ingredient, *per se*, is soluble in water; the fourth ingredient, *per se*, cannot exist, and can only be held in solution and be produced by the presence of free carbonic acid gas. The fifth ingredient, *per se*, is soluble in water; the next ingredient, *per se*, is soluble, but very slightly; and I doubt whether this quantity (of the analysis) would remain in solution without the presence of free carbonic acid gas. The next ingredient, *per se*, does not exist; hence insoluble in water, and can only remain in solution by the presence of free carbonic acid gas. The next ingredient, *per se*, is insoluble in water, and can be held only in solution by free carbonic acid gas. The ingredients in their order as referred to in my answer are as follows:

Sodium chloride,

Sodium sulphate,

Magnesium sulphate,

Calcium bicarbonate,

Potassium sulphate,

Calcium sulphate,

Ferrous bicarbonate,

Silica.

The bottle containing the label just referred to is offered in evidence. The Notary will please mark the same "Defendant's Exhibit, Defendant's Hunyadi Bottle."

Q. 37. Is the specific gravity of the water an accurate test of the constituents, or substances held in solution.

Objected to as leading, by complainant's counsel.

A. The specific gravity, or so-called density of a water, does in no manner indicate the nature of the substances held in solution in that water.

Q. 38. What results would be obtained by leading the water from numerous springs into a common tank and regulating the relative flows from those springs to obtain a resultant water of certain density.

Objected to by complainant's counsel as incompetent and indefinite.

A. It would be possible to obtain a water of uniform density, and yet have a very variable composition.

Q. 39. State your experience as to uniformity of Hunyadi Janos of complainant.

A. I know from personal experience that the total solids varies in different bottles of Hunyadi Janos Natural Water.

Q. 40. Do you know whether or not the complainant's Hunyadi Janos contains any free carbonic acid gas?

A. I have found it to be present, and also to be absent.

Counsel for complainant gives notice that at the final hearing of this suit a motion will be made to strike out the testimony of this witness on all the grounds heretofore noted, and, without waiving any of such objections, proceeds to cross-examine the witness *de bene esse*.

Cross-examination of witness by ME. SCHRECK:

X Q. 41. When did you start in the business as a pharmacist?

A. I started in business on my own accord May 1, 1874.

X Q. 42. As a druggist?

A. Yes, sir. I made my State examination as pharmacist, which at that time applied to Cincinnati alone, in 1874, although I was not a graduate of Pharmacy until 1882.

X Q. 43. Did you conduct a drug store of your own from 1874 to 1882.

A. I was a partner in the firm of A. Fennel & Son; that firm name is still retained. I think my father died in '84.

X Q. 44. Who was your partner from '74 to '82?

A. My father.

X Q. 45. What was your occupation before the year of 1874?

A. I had no regular occupation. I was attending the University of Cincinnati, doing chemical work under my father; devoting most of my time to mathematics, mechanics, and architectural work.

X Q. 46. When did you first work in a drug store?

121 A. I commenced as early as 1865.

X Q. 47. You were then eleven years old, where you not?

A. I was. I had certain duties to perform that I performed with abhorrence.

X Q. 48. When did you commence to study pharmacy?

A. I cannot give a particular date when I commenced to study pharmacy. I was born in the atmosphere of chemistry and pharmacy, and everything relating to pharmacy.

X Q. 49. When did you commence your studies at college in pharmacy?

A. In 1880, after I was married.

X Q. 50. You have produced on your direct examination a bottle, to wit, Hunyadi Janos, numbered 2. To your knowledge, was mineral water in bottles with labels like this exhibit ever sold in this country?

A. I sold it myself, and I presume others sold it too.

X Q. 51. When did you sell it?

A. Well, I will give myself—within the last ten years. I can give the source. That water was bought from a local dealer, Mr. Bacharach, who imported these waters himself—at least that is what he told me—and I am satisfied that I bought them from him within the last ten years. And I am almost willing to say, within the last five years.

X Q. 52. When did you first see a bottle of the natural Hunyadi Janos water?

A. I can't say when I first saw Hunyadi Janos natural water. I recollect very distinctly that we sold large quantities of the Franz Josef Hunyadi water on prescriptions in the early eighties, and I know that within that same period we also sold Hunyadi Janos.

X Q. 53. You do not remember seeing the natural Hunyadi Janos before 1880, do you?

A. I cannot say that I did, or that I did not. I am giving the fact of time in relation with other facts that I know positively.

X Q. 54. Then your memory as — when you first saw such natural Hunyadi Janos is indefinite, is it?

A. I can't say that it is indefinite. That fact of the first use of imported natural waters dates to the large use of the Franz Josef water by a physician, who also used a great many other waters, and that was in early 1880's, and I can't say whether we had any demand, or any stock, of natural water prior to that time.

122 X Q. 55. When did you first see a bottle of Hunyadi Janos with the red and blue label, like exhibit No. 1?

A. The red and blue label is a much later date. I would say about ten years later; perhaps '88, '9, or 1890, in that neighborhood.

X Q. 56. When did you first see a bottle of the Franz Josef water to which you have just referred?

A. I recollect the Franz Josef very distinctly; a red and white label; early in the eighteen hundred and eighties (1880's). We also had a white and blue Franz Josef, but this we got much later; the middle eighteen ninety-five; between 1890 and 1900.

X Q. 57. Did this Franz Josef water which you recollect having seen in 1880, have the name Hunyadi on the label?

A. Not directly. It was given as Hungarian water, and we were left to the impression that it was the Hunyadi, but of a specific spring.

Complainant's counsel objects to the answer as not responsive and volunteered, and further, as incompetent, and gives the same notice as to previous unresponsive answers of this witness.

X Q. 58. Will you please answer my question, yes or no, whether this Franz Josef of 1880 had the name Hunyadi on the label?

A. The name Hunyadi was not on the label.

X Q. 59. Is the Franz Josef water being sold in this country to-day?

A. That I can't answer positively.

X Q. 60. You are familiar with mineral waters that are on the market to-day?

A. Yes, sir.

X Q. 61. But you do not know whether the Franz Josef water is being sold in Cincinnati to-day?

A. I do not know that it is; but I am inclined to believe that it is.

X Q. 62. Is the Franz Josef water a laxative bitter water?

Counsel for defendants objects to this line of examination concerning Franz Josef water as being improper, because referring to matters not brought out in the direct examination.

123 A. The Franz Josef and all the bitter waters depending upon dose are laxative waters, and are bitter.

X Q. 63. Then Franz Josef is a laxative bitter water, is it?

A. It is a laxative bitter water. I wish it understood that any dose or any quantity does not make it a laxative bitter water.

X Q. 64. Are you not aware of the fact that the importers of the Hunyadi Lajos water as exemplified by the exhibit here produced, were sued by the complainant in this case, in this country, and that for several years this water was sold in this country with a label like the exhibit Lajos Forras bottle, and without the strip-label appearing on this exhibit?

A. That they were sued, that I don't know. That this water, Lajos Forras, was sold without the strip-label I am aware of, because I received the labels, to put them on.

X Q. 65. Are you not aware of the fact that this Lajos Forras water is now being sold in this country to the public without the strip label appearing on this exhibit?

A. I am not aware of that fact. I will further state that I do not know whether it is sold at all with the strip-label or without it.

X Q. 66. And you mean to testify that you do not know that a bitter water in bottles and with labels like the exhibit Lajos Strip Bottle, is being offered for sale and being sold by druggists in Cincinnati, to-day, identically like this exhibit, but without the strip label?

A. I know that a Hunyadi water other than Janos of red and white label is offered for sale in Cincinnati, but I can't say whether it is the Lajos, or any other Hunyadi water, because within the last two years I haven't handled it.

X Q. 67. Is this Lajos Forras bitter water, like the exhibit Lajos Strip Bottle, a laxative bitter water?

A. I can only express my opinion from the label. I have no personal experience. This answer is based on the product mentioned in the preceding question, within the last three years. It is a laxative bitter water.

Recess until 2 P. M.

X Q. 68. Did you ever analyze the so-called bitter water of Dr. Euno Sander, about which you have testified?

A. I never analyzed it.

X Q. 69. So that you do not know of your own knowledge what is contained in that water.

124 A. I haven't the least idea what is contained in that water.

X Q. 70. Is there anything on the label of that water of Dr. Sander which would indicate the composition of the water?

A. It would indicate a partial combination. Several ingredients are named. It says epsom and glauber salts—large quantities—and carbonic acid; those are the only ingredients named.

X Q. 71. You do not find any statement on that label as to the proportions to which any of the chemicals are contained in that water.

The question objected to by counsel for defendants for the reason that the label shows what it contains.

A. No indication of quantity or proportion.

X Q. 72. Have you ever heard of the bitter water put up and sold by Dr. Sander under the name of "Relief"?

A. No, sir. Not before yesterday.

X Q. 73. Are you well acquainted with the defendants in this suit?

A. I can't say that I am well acquainted with them.

X Q. 74. Are you well acquainted with Mr. Greyer, who is connected with the defendants?

A. I am well acquainted with Mr. Greyer.

X Q. 75. Has Mr. Greyer informed you of the progress of this suit from time to time?

A. He hasn't given me any information on this subject. I don't know the progress of the case. In fact, I don't know what the suit is about. I can surmise what it is about. I have never seen anything in writing, print, or made any inquiries about it.

X Q. 76. Have you not made an affidavit in this suit?

A. I have. I have made an affidavit. But I don't know whether it is in this suit or not; until within the last two days I didn't know that there was more than one suit.

X Q. 77. Do you remember stating in said affidavit that you had read affidavits filed in this suit, and particularly the affidavit of Ernst E. Smith and Julius Greyer?

A. I recollect that very distinctly that I read those affidavits at the time that I made my affidavit; gave them no further thought than reading them.

X Q. 78. Have you read the affidavits of Dr. Enno Sander?

125 A. No, sir.

X Q. 79. Are you in business as a druggist to-day?

A. Yes, sir.

X Q. 80. Do you sell bitter water by the glass in your drug store?

A. Yes, sir; when they take the whole bottle.

X Q. 81. If a person comes into your store and asks for a glass of Hunyadi, what do you give him?

A. I think I can safely say that within the last three years we haven't given them anything but Hunyadi János, blue label. The blue wrapper.

X Q. 82. Who were the agents of the Hunyadi Janos water in this country previous to 1896?

A. Of my own knowledge, I don't know. I was told that the Apollonaris Company were the representatives.

X Q. 83. On the price-list of the P. Scherer Company, beside the Hunyadi Matyas to which you have referred, there is also the entry "Ofner (Hungary) Franz Josef," saline aperient, and also "Ofner Hunyadi Laszlo," saline aperient, and also "Ofner Rakoczy," saline aperient, is there not?

A. Yes, sir.

X Q. 84. Have you analyzed Hunyadi Janos, the natural aperient water of the complainant, more than once?

A. I have.

X Q. 85. How often have you analyzed it?

A. Three times.

X Q. 86. Please state at what different times these three different analyses were made.

A. These analyses were made, I think, in 1901, about the middle of the year; within six weeks of each other.

X Q. 87. Do you mean that a period of six weeks elapsed between each of these analyses?

A. I mean that six weeks elapsed between the first and last analysis.

X Q. 88. How much of the Hunyadi Janos water did you analyze each time?

A. Seventy cubic centimeters.

X Q. 89. Will you please express that in pints, or quarts, as near as possible.

A. Between two and three fluid ounces, that is about an eighth of a pint; it is a little more.

X Q. 90. Where did you get the water from which you made these analyses?

A. One I got out of my own stock; one I got from John D. Park & Son, and one I got from Hale-Justin & Co.

126 X Q. 91. You mean that you took approximately two fluid ounces for each analysis from a bottle of complainant's Hunyadi waters, which you had obtained from the sources as indicated in your last answer.

A. I took seventy cubic centimeters, equal to about two and one-half fluid ounces, or equal to about one-eighth of a pint, of each of these waters, and analyzed them separately.

X Q. 92. Now please state the result of your first analysis?

A. I determined the total solids, the total chlorides, the total sulphates, the bases, sodium, potassium, magnesium, iron, calcium, insoluble residue. Free acid, didn't determine quantity.

X Q. 93. Can you give us the exact quantities of the various substances found by you in the first analysis?

A. I could not give them. I believe I could trace up my records and find them. But as the analysis was one of self-satisfaction, I couldn't say positively whether I kept the record permanently.

X Q. 94. What caused you to make this analysis?

A. Mr. Greyer requested me to examine the Wagner's Hunyadi water, at my leisure, and for his pleasure. Otherwise it was not a business transaction.

X Q. 95. Did you compare the result of this first analysis of the natural Hunyadi Janos water made by you with any of the published analyses of the Hunyadi Janos water?

A. I did.

X Q. —. With which did you compare it?

A. I compared it with Fresenius' analysis.

X Q. 97. Did you compare it with any other published analysis?

A. I did not, although I read some other analysis, but made no comparison except with Fresenius' analysis.

X Q. 98. How did your analysis compare with the published analysis of Fresenius?

A. The total solids of the natural Hunyadi water of the first sample were less than those given by Fresenius; the quantity of chloride was less, while that of the sulphates was greater. This fact induced me to make analysis of the other two samples mentioned before.

X Q. 99. Will you please state the result of the second analysis made by you.

A. The second sample showed a larger amount of total
127 solids than the first, although there was but little difference in the amount of chloride and sulphates.

X Q. 100. How did this second analysis compare with the analysis of Fresenius?

A. The chlorides and the sulphates showed less, total solids less, but more than in the first case.

X Q. 101. Did you compare this second analysis of yours with any other published analysis than that of Fresenius?

A. I did not. All my comparisons were made on the Fresenius basis, because the artificial Hunyadi of Wagner were made according to Fresenius; that was the standard as accepted by the firm.

X Q. 102. Now please state the result of your third analysis.

A. The third analysis, likewise, showed less in total solids, and less in chlorides and sulphates than the Fresenius analysis. It harmonized more with the sample No. 1.

X Q. 103. If you take only the ingredients of the Fresenius analysis and water, do you produce a water like Hunyadi Janos?

A. If you take the ingredients as given in quantity by the Fresenius analysis, with water in the proper proportions with or without carbonic acid gas, you most emphatically do not get Hunyadi water.

X Q. 104. Why not?

A. Because the substances would react amongst themselves and produce new compounds which would have no bearing to the original substances, as given by the analysis.

X Q. 105. Does the Hunyadi Janos, the natural water of the complainant, contain chemicals in solid form?

A. In bottles, or the water emanating from the spring, contain no solid chemical substances, in suspension.

X Q. 106. Are all the chemicals stated in the analysis of Fresenius contained in the natural Hunyadi Janos water in liquid form?

A. I can't say whether in the liquid form or not: the presumption is that a mobility of the molecules is necessary to produce solution.

X Q. 107. This, however, is merely a hypothesis, and is not stated by you as an ascertained fact, is it?

A. In order to explain natural phenomena, we must assume a certain constitution of matter, and these assumptions are hypothetical and are in a measure verified by a collection of different
128 observed phenomena, but they are not indisputable.

X Q. 108. You have stated on your direct examination that you have observed floating matter at various times in the natural Hunyadi Janos water. Can you state what the nature of that matter was?

A. They were fungus growths.

X Q. 109. What was the chemical nature, organic or inorganic?

A. Organic in nature.

X Q. 110. Are such organic substances contained in the analysis of Fresenius?

The question is objected to by defendants' counsel, as the analysis of Fresenius is set forth on the labels of defendants' bottles.

A. They are not.

X Q. 111. If the floating matter in the Hunyadi Janos water consisted of inorganic substances, would it float or would it not rather sink to the bottom, and be practically an invisible residuum on the bottom of the bottle?

A. It would settle out. It would precipitate.

X Q. 112. Would such a precipitate have to be visible, or might it not be invisible?

A. It depends altogether on the quantity. It might appear as completely absent.

X Q. 113. In your opinion, can any person from the analysis of Fresenius make a Hunyadi water?

A. Without chemical knowledge the analysis of Fresenius would be a riddle, consequently could not make Hunyadi water.

X Q. 114. Does not an analysis of a mineral water show only the solid substances which have been extracted from the water by evaporation of the water?

A. An analysis shows all the ingredients supposedly contained in the water. The substances themselves are not extracted by evaporation. The total solids named would not indicate their nature, or composition.

X Q. 115. How is their exact nature and composition arrived at?

A. Well, in the first place, it is customary to determine the total solids contained in a definite quantity of water, determined by evaporation on a water-bath to a constant weight. Secondly, to
129 determine the soluble salts and the insoluble salts by solution in a proportionate quantity of water, not to exceed one-third of the original. Thirdly, the determination of the insoluble substances in dilute hydrochloric acid. Fourthly, the ascertaining the completely insoluble solids which constitute residue. Now we have the total solids, the soluble solids and the insoluble solids. Of the insoluble solids we have those soluble in hydrochloric acid. The residue

of these are the completely insoluble solids. The soluble solids we ascertain the acids and the basis. In the acid soluble (insoluble residue) we determine the bases and all acids except hydrochloric. Then we have the completely insoluble residue; we examine for bases only. Now next, in the original water, we examine for quantity of the acid; we determine the acids, and from the factors determined from all these determinations we calculate the composition of the salts contained in the original water, being governed by the solubility of the salts in water. The chlorine, or the hydrochloric acid radical, is allotted to sodium first, potassium next, magnesium next, calcium next, lithia next. The sulphuric acid radical, sodium first, magnesium next, potassium next, calcium next. Carbonic acid radical, sodium first, potassium next, magnesia next, calcium next, iron next. Phosphoric acid radical, sodium first, lithia next. Now in all these allotments the factors obtained in the preliminaries must be kept in view. If too much acid is added to one and producing a result greater than the total solids, then the allotment was to the wrong substance.

X Q. 116. Now please state what becomes of any gases that may be contained in the water, if such an analysis as you have just described is made.

A. The greater portion escapes upon opening the bottle, and the small quantity held in solution will be driven out upon the application of heat in the process of evaporation.

X Q. 117. Then I understand it that the analysis will not show what gases are contained in the water. Is that correct?

A. The analysis as outlined so far will not show the gases contained in the water.

X Q. 118. Are these substances, which the analyst finds in an analysis of mineral water, found by him after the first evaporation of the water as so much magnesium sulphate, so much sodium sulphate, so much potassium sulphate, etc.?

A. Certainly not.

130 X Q. 119. In what form does the analyst find the substances after the first evaporation?

A. The total solids may be in the original water as chloride of sodium and carbonate of potassium; the solids obtained may be chloride of potassium and carbonate of sodium. He must determine from the other factors how the combination takes place.

X Q. 120. Now please state how this is, particularly in the case of analyzing Hunyadi Janos water. In what form are the particular substances found after the evaporation of the water?

A. Taking the analysis of Hunyadi water by Fresenius, sodium chloride, sodium sulphate, magnesium sulphate, potassium sulphate, very probably would suffer no change. Calcium bicarbonate would be converted into calcium carbonate. Calcium sulphate would be rendered insoluble. Ferrous bicarbonate would in all probability be oxidized more or less into ferroso-ferrie oxide. And silica would be rendered insoluble.

X Q. 121. Is it not a fact that the analyst only guesses that there is so much sodium sulphate present in the natural water because

he assumes that the sodium present would combine with so many atoms of sulphur?

A. Most emphatically no. In the first place, all elementary substances and their compounds are very selective in their associations. Experience and observation prove beyond the question of a doubt that these associations can only exist under definite conditions. These conditions are influenced by heat, and heat alone. The influence of light, magnetism and electricity are only modifications of heat, consequently solubility is the only factor to be considered in the deportment of the substances, and the allotment of acid radicals to a base is under specific definite uniform quantities, in proportion to their molecular weights. In the analyses of waters these solubilities are definitely established, whether or not in the presence of free gas,—that is, carbonic acid gas,—hence the chemist discovers by absolute rules, which are not subject to fluctuations or whims of the operator.

X Q. 122. Then it is your conclusion, based on the experience of chemists, as to the selection of elementary substances, which induces you to make the statement that certain combinations exist in natural waters from the substances as found by the analyst after the first evaporation of mineral waters?

A. Certainly.

131 X Q. 123. Is not this same true with reference to all other combinations predicated to exist in natural mineral waters by chemists?

A. Yes, sir.

X Q. 124. Does heat change the selection of elementary substances and their compounds, of their associations?

A. It most emphatically does.

X Q. 125. Light, magnetism and electricity being, as you state, modifications of heat, will also change this selection of elementary substances and their compounds?

A. It will. For instance, hydrogen and fluorine have such selection for each other that only with the greatest difficulty they can be separated. Hydrogen and chlorine possess a similar selectiveness. So does bromine, so does iodine; but light is sufficient to separate the bromine from the hydrogen, and heat will separate iodine from hydrogen with the greatest ease. They all manifest the same selectiveness in marked gradations, and the selectiveness is modified, more or less, by heat, which is the tangible factor, in contradistinction to light, magnetism, and electricity.

X Q. 126. Do you know at what temperature the water of the natural Hunyadi Springs takes up the various chemicals which are finally contained in it as it comes to the surface?

A. I do not know.

X Q. 127. Have you ever seen an atom of sulphur?

A. No, sir.

X Q. 128. Have you ever seen an atom of anything?

A. No, sir.

X Q. 129. Is not the whole atomistic theory unprovable?

A. I think not.

X Q. 130. Do you not believe in the atomistic theory, or do you rather believe in the theory of Liebnitz as to molecules?

A. I believe in an atomistic theory.

X Q. 131. In recent years have not new substances been discovered in the air, as, for instance, argon, helium, neon, krypton, and xenon?

Objected to by defendants' counsel as matters not brought out in the direct examination, and as being entirely irrelevant, as the presence of such imaginary substances is not shown to be found in any of the solutions before the Court.

132 A. These substances have supposedly been obtained from the air.

X Q. 132. Is not a like discovery possible in the case of water and every other substance?

A. It is possible.

X Q. 133. Is there any radium in the natural Hunyadi Janos?

A. So far as I know, there is not.

X Q. 134. How do you know there is not.

A. I said so far as I know there is not.

X Q. 135. Then, for all you know, there may be radium in Hunyadi Janos?

A. There may be, but not very probably.

X Q. 136. Do you know that the most recent investigations of chemistry have shown that mineral waters possess a certain radio activity?

A. I am aware of the fact that the latest theory is that there is radio activity in everything, but still on a very speculative basis.

X Q. 137. Chemistry has made considerable progress since 1863, has it not?

A. The progress in chemistry since 1863 has been in the organic field, and not in the inorganic. A few rare elements have been discovered, their characteristics determined, but nothing new has been added to the elementary substances known prior to 1863 in the inorganic field.

X Q. 138. But considerable progress has been made during this period in chemistry in other lines than merely the discovery of new elements, such as, for instance, the combination of elements, their selective powers, their reaction under different conditions, etc., is it not?

A. The advances made in inorganic chemistry are solely in the application of known facts under the technical field, coming under the head of Technical Chemistry.

X Q. 139. Is not the analysis of Professor Ludwig of Hunyadi Janos water different from the older analyses of Hunyadi Janos?

A. I think the difference is only in quantities, and not in constituents.

X Q. 140. But it is in fact different, is it not?

A. It is different; yes, sir.

X Q. 141. Is Prof. Ludwig regarded as a high authority in the matter of analyses?

133 Objected to by defendants' counsel as irrelevant, and as referring to matters not brought out in the direct examination.

A. He is considered an authority.

X Q. 142. Please state specifically which substances in the analysis of Dr. Ludwig of the natural Hunyadi water are not contained in the water prepared by the defendants and sold by them under the name Hunyadi?

A. The analysis of Dr. Ludwig shows the presence of strontium sulphate, which is not indicated in the Fresenius analysis.

X Q. 143. Hunyadi Janos water has also been analyzed by Prof. Liebig, by Bunsen, has it not?

A. It has.

X Q. 144. Do not all the analyses of Hunyadi Janos, such as those of Fresenius, Ludwig, Bunsen, and Liebig, differ?

A. All these analyses differ in quantities, but not in constituents?

X Q. 145. Does the analysis of Fresenius show any strontium?

Objected to by counsel for defendant, as the question has already been answered.

A. With all due respect to Dr. Ludwig, I question very much his ability to eliminate nine-hundredths of a part of strontium sulphate in ten thousand parts by chemical analysis.

The answer of the witness is objected to as, in the first place, not responsive, and entirely volunteered, and the previous question is repeated, and the witness is requested to answer it.

A. It does not contain any.

X Q. 146. Does the analysis of Bunsen show any strontium?

A. The analysis of Bunsen of Hunyadi Janos water shows the presence of strontium.

X Q. 147. Does the analysis of Fresenius show any calcium bicarbonate?

A. It does not.

X Q. 148. And this same substance, calcium bicarbonate, is shown in the analyses of Ludwig, Bunsen, and Liebig, is it not?

134 Objected to as being secondary evidence. If the counsel for complainant desires to draw the Court's attention to these analyses, the proper method of doing so is to offer the analyses themselves, as published.

In view of the foregoing objection, counsel calls the attention of the Court to the answer of witness, X Q. 144. In order to facilitate the consideration of the testimony of this witness, counsel for complainant at this point offers in evidence for identification at the present time only, the analyses of Liebig, Bunsen, Fresenius, and Ludwig, contained on pages 31 and 32 of complainant's printed papers in the motion for preliminary injunction, and the Notary is asked to mark the same "C", for identification, "Complainant's Exhibit, Hunyadi Janos Analyses, December 14, 1904."

X Q. 149. In view of your answers 145, 148, will you now want to correct your answers to question X Q. 144, and state whether the

analyses of Hunyadi Janos water by Fresenius, Ludwig, Bunsen, and Liebig, differ both in quantities and constituents?

A. The analyses as presented in constituents not materially and in quantities materially, differ.

X Q. 150. Is there any difference between natural rain water and distilled water?

A. There is a vast difference between natural rain water and distilled water.

X Q. 151. Can you state briefly what this difference is?

A. Distilled water is pure water free from all gases, while rain water of the purest kind contains constituents of the air dissolved during the passage from the upper strata to the lower strata of earth.

X Q. 152. Does not rain water also contain solids such as ammonium salts, of nitrous or nitric acid?

Objected to as matters not brought out in the direct, and as irrelevant and immaterial.

A. It may contain them more or less in quantity.

X Q. 153. Is not water found at different places on the earth different in effect, although it may show the same chemical analysis?

A. The constitutional effect may vary very considerably.

135 X Q. 154. Is not the water of Cincinnati particularly favorable to the production of beer?

A. I can't say that it is.

X Q. 155. Do you know?

A. I can't say that I do know.

X Q. 156. Have the organic substances which you claim exist in the natural Hunyadi Janos water any effect whatever on any of the chemical or inorganic substances, or *vice versa*?

A. The organic constituents most emphatically affect the saline constituents of the water.

X Q. 157. Then it is your deduction that there is a change going on in the natural Hunyadi Janos water, is it not?

A. It is understood that I am speaking of changes taking place in the bottle, and not of changes taking place in springs affected by organic matter.

X Q. 158. Is there any change going on in the spring itself?

A. The answer to that question is a question of opinion. It stands to reason that the underlying soil, no matter how large, will eventually be deprived of its soluble constituents, and, consequently, that a change is taking place in the springs themselves.

X Q. 159. Do you consider yourself a greater authority than Dr. Ludwig on chemical analyses of bitter water?

A. I believe every man is entitled to use the brains that God gave him.

X Q. 160. Could any chemist who took a bottle of the artificial mineral water prepared by the defendants and sold under the name of Hunyadi, ascertain whether it is made by following the analysis of Fresenius, or must he take the defendant's assertion to that effect, on faith?

A. Any reputable chemist could make the analysis, to determine

the constituents, and he could very quickly ascertain that it wasn't according to the analysis of Ludwig, the analysis of Bunsen, the analysis of Liebig; and if he made the calculation to conform with the quantities given, he would very readily see that it was according to the analysis of Fresenius.

X Q. 161. If such a chemist did not have the analysis of Fresenius before him, would he arrive necessarily at the same result?

Objected to as indefinite.

136 A. He would not necessarily arrive at the conclusion that it is made according to any chemist of authority.

X Q. 162. Have you ever tasted the water at one time prepared and sold by Dr. Thackeray under the name of Hunyadi Geyza?

A. I have not.

X Q. 163. Do you know whether Fresenius has analyzed any other Hungarian bitter water than Hunyadi Janos?

A. I think he has.

X Q. 164. Can you produce any such analysis published.

A. If he has made any analyses of any other Hungarian water, I can produce them.

X Q. 165. Can you produce them now?

A. I would have to look it up.

X Q. 166. Do you know the analysis of Hunyadi Matyas.

A. I have seen it, and my impression is that it is stronger in solid constituents than the Hunyadi Janos.

X Q. 167. Do you know the analyses of Hunyadi Lazlo?

A. I would answer it just the same as the previous question. They all contain more solids than the Hunyadi Janos; that is my general impression.

X Q. 168. And do all these various natural Hunyadi waters differ both in their chemical constituents and in the quantity of the chemical constituents?

A. They differ in the quantities, but the constituents are nearly alike.

Counsel for defendants objects to the questions and answers concerning the different analyses of these Hungarian bitter waters upon the grounds that they are all published, and the most expedient way of getting the matter before the Court is to offer the publications.

Witness continuing his answer:

By reference to the labels on one of the bottles, to wit: Hunyadi Matyas, they also differ in constituents.

X Q. 169. Then you could not state, could you, that the same analysis would answer for the various natural Hunyadi waters, either in chemical constituents or in quantity of constituents, could you?

A. You could not.

X Q. 170. Are you a physician?

A. I am not.

137 X Q. 171. Does the analysis of Fresenius show any carbonic acid, or carbonic acid gas?

A. It does.

X Q. 172. In which of the eight substances enumerated on this analysis do you find carbonic acid, or carbonic acid gas?

A. In two of them, calcium bicarbonate and ferrous bicarbonate.

X Q. 173. But you do not find any carbonic acid or carbonic acid gas separately in this analysis, do you?

A. No, sir; I do not.

X Q. 174. Do you know of a laxative bitter water known as "Rubinat?"

A. I do.

X Q. 175. In your direct examination you have stated that in your experience you have seen the natural Hunyadi Janos water contained flocculent matter. Did you ever analyze this matter?

A. I did not.

X Q. 176. Do you know the analysis of Franz Josef water?

A. I have seen the analysis, and know that the solid constituents are greater. And I believe, according to Atfield, twice as large, or nearly so, as those contained in Hunyadi Janos water.

Cross-examination closed.

Redirect examination by Mr. MURRAY:

R. D. Q. 177. Do you know from your own knowledge that water of the same chemical analysis, if found at different localities, has a different effect?

Objected to by counsel for complainant, as already answered.

A. I know that waters having the same constituents chemically will have different constitutional effects.

R. D. Q. 178. If taken at the same place and under the same conditions, and by a person in the same physical condition and frame of mind, would water having the same chemical analysis have a different effect?

A. The interpretation placed upon the question in cross-examination is a different one from the interpretation placed by your 138 question. In the question in cross-examination I had not in mind the question of climate, temperament of the individual, but simply the constitution of the water, chemically and otherwise. The chemical constituents do not alone constitute the therapeutic properties of a water. According to the question in redirect, if the water is exactly the same, and the conditions are the same, climatic and otherwise, and temperament the same, the waters will act alike.

R. D. Q. 179. Is it to be understood that a chemist, in analyzing the defendants' Hunyadi water, would reach a different conclusion if he had the analysis of Fresenius before him than he would if he did not have it before him? To make my question more clear, would he find a different amount of acids and bases?

Objected to by complainant's counsel as leading and suggestive, and as already fully answered.

A. I believe that I stated it clearly that any reputable chemist would not be influenced in his conclusions, provided he follows the

accepted views laid down by Fresenius, Bunsen, Liebig, and acknowledged by later authorities as absolutely proper.

Examination of witness closed.

(Signed.)

CHARLES T. P. FENNEL.

Adjourned until 10 A.M., Thursday, December 15, 1904.

Met pursuant to adjournment. Present, same as before.

Julius Greyer.

JULIUS GREYER, a witness produced upon behalf of defendants, first having been duly sworn, deposes and says to questions by Mr. Murray, as follows:

Q. 1. State your name, age, residence, and occupation?

Counsel for complainant objects to the testimony of this witness on the ground that the same is not properly taken under the notice hereto annexed, the said notice not providing for the taking of testimony in accordance with the Revised Statutes of the United States, or the rules of this Court, not before the proper officer, as provided by said statutes and rules.

E39 A. Julius Greyer, fifty-two years of age; 2164 Elysian Street, Cincinnati, Ohio; manufacturing chemist.

Q. 2. What was your occupation prior to the time you became a manufacturing chemist?

A. I was a druggist, and a manufacturing chemist.

Q. 3. For how many years were you a druggist?

A. I went into the drug business about 1868.

Q. 4. What public positions have you held as a pharmacist?

A. On the Board of Trustees of the Cincinnati College of Pharmacy, for about twenty-five years. And have been a member of the Ohio State Board of Pharmacy about eight and one-half years. And am a member now.

Q. 5. Did you become acquainted with any imported Hunyadi waters whilst you were a druggist? And if so, with what ones?

A. Yes, with Hunyadi Janos, Matyas, Arpad, Lajos and, I believe, Lazlo.

Q. 6. Did you become familiar with the advertisements and the labels of these different Hunyadis?

A. In a way, I did.

Q. 7. Can you produce any of them?

A. Yes, sir. I can produce Hunyadi Matyas; two different ones of Hunyadi Janos, Hunyadi Lajos, and Hunyadi Lajos Strip.

The witness refers to the bottles of Hunyadi introduced as exhibits during the testimony of the witness C. T. P. Fennel.

Q. 8. You have referred to the bottles. Can you produce any advertisements of the natural Hunyadi?

A. Yes, sir.

Q. 9. Where did you obtain these advertisements?

A. I have picked them up at random, to go into my collection which I am making of advertisements pertaining to all mineral waters, as they appear from time to time.

Q. 10. Take the individual advertisements, and indicate more definitely the source from which you obtained them.

A. Nos. 1, 2, 3, 4, are clippings from the Cincinnati Lancet Clinic; the others I am unable to say just how they were collected.

The advertisements referred to by the witness are offered
140 in evidence, and the Notary is requested to mark them as follows:

"Defendants' Exhibits, Complainant's Advertisements.

"Clippings from the Cincinnati Lancet Clinic, No. 1, 2, 3 and 4 respectively.

"Complainant's Catalogue No. 1.

"Complainant's Card No. 1."

The offering in evidence of these alleged advertisements is objected to by complainant's counsel as incompetent, immaterial, and irrelevant.

Q. 11. Have you any other advertisements of the complainant?

A. I have a street-car sign.

Q. 12. Where did you obtain this.

A. I obtained it from the office of Kisseam & Co., agents for street car advertising.

The sign referred to by the witness is offered in evidence. The Notary is requested to mark the same "Defendants' Exhibit, Complainant's Sign."

Q. 13. Please examine these various bottle-labels and advertisements, and state whether or not the word "Natural" appears upon all of them.

Objected to by complainant's counsel as incompetent, as the various papers speak for themselves.

A. They all have the word "Natural" on them.

Q. 14. Are you connected with the defendants in this case?

A. I am, as their chemist.

Q. 15. What is the business of the defendants?

A. Manufacturers of artificial mineral waters.

Q. 16. How long have the Wagners been manufacturers of artificial mineral waters?

A. To the best of my knowledge, Wagner's Sons and their predecessor, their father, have been in the business for about forty or fifty years, as near as I can answer.

Q. 17. What steps have they taken to draw the attention of the public to the fact that they are manufacturers of artificial mineral waters?

141 Objected to by complainant's counsel as leading and incompetent.

A. They have on all their advertisements, especially since I have been connected with them, advertised in such a manner so there

could be no doubt but that their products were artificially prepared mineral waters.

Q. 18. Can you produce any advertisements and catalogues of the defendants having thereon the word "Hunyadi"?

A. I can.

Q. 19. What are they.

A. Catalogue of 1899; Complainant's Exhibit, Defendants' Catalogue, 1901; Complainant's Exhibit, Defendants' Essay; Complainant's Exhibit, Defendant's Price List; Complainant's Exhibit, Second Pamphlet. Advertisement from the Tennis Tournament, which I have marked "Tennis Tournament." And one which I am unable to state just where it appeared, marked "Clipping."

The papers referred to not already exhibits in the case are offered in evidence, and the Notary is requested to mark them "Defendants' Exhibits, Defendants' Catalogue of 1899; Defendants' Tennis Advertisement; Defendants' Exhibit, Advertisement No. 1."

The offering of these exhibits in evidence is objected to by complainant's counsel, as incompetent.

Q. 20. Does the word "Artificial" appear upon these exhibits, and with what amount of prominence.

Objected to as incompetent and calling for secondary evidence, and as leading (by complainant's counsel).

A. It does, in such a way as leaves no doubt but what their products are artificial products.

Q. 20a. Can you produce any other advertising matter of the defendants?

A. I can, and herewith produce a business card.

The business card is offered in evidence, and the Notary is requested to mark the same "Defendants' Exhibit, Defendants' Business Card."

Q. 21. In what form are your business cards, letter heads, statements, etc., gotten up?

142 A. They all show the same heading as the business card.

The answer is objected to as stating the contents of documents that are not produced.

Q. 22. Will you produce the papers referred to in your last answer?

A. I will.

Q. 23. In what and how many styles of bottles is your Hunyadi water put upon the market?

Objected to by complainant's counsel as incompetent.

A. In three styles: in siphons, pints, and splits.

Q. 24. Can you produce these bottles?

A. I can.

One of the bottles referred to was offered during the testimony of witness C. T. P. Fennel; the other two are offered in evidence.

The Notary will please mark them "Defendants' Exhibit, Defendants' Split Bottle, and Defendants' Siphon Exhibit."

Q. 25. Do you know how many different kinds of artificial waters the defendants manufacture?

A. Between twenty-five and thirty.

Q. 26. Do you know whether or not defendants' Hunyadi water has ever been sold as a natural Hunyadi?

A. It has not.

Objected to by complainant's counsel as incompetent.

Q. 27. When did you start to manufacture artificial Hunyadi water, or artificial Hunyadi Janos? And you may state how you labeled them, and if there has been any change in the labels; state at what time the change was made? I call your attention to Complainant's Exhibit, Defendants' Bottle (label), and Complainant's Exhibit, Defendants' Changed Label; Complainant's Exhibit, Defendants' Siphon Label, and Defendants' Exhibit, Defendants' Split Bottle.

A. I started to manufacture Hunyadi and labeled bottles at that time "W. T. Wagner's Sons, Artificial Hunyadi Janos," as shown in Complainant's Exhibit, Defendants' Bottle (label). About 1900, before the beginning of suit for injunction of Emilie Saxlehner
143 against W. T. Wagner's Sons, the suffix "Janos" was dropped.

This about the same time when the siphon label Complainant's Exhibit, Defendants' Siphon label was being printed. Later, about 1903, the label on Exhibit Defendants' Split Bottle, another label, was printed, on which the word "Artificial" appears still more prominently than on any of the others.

Complainant's counsel objects to the answer of the witness in so far as it characterizes these labels, or describes them, as the labels speak for themselves.

Recess until 1:30 o'clock.

Q. 28. In my last question I asked you when you started to manufacture artificial Hunyadi water, or artificial Hunyadi Janos. Please state when you started?

A. The latter part of 1897.

The witness has produced the bill heads and statements and an envelope, and the same are offered in evidence, with the request that the Notary mark them "Defendants' Exhibits, Defendants' Bill Head, Defendants' Statement, and Defendants' Envelope."

Q. 29. Had you known of any artificial Hunyadi or Hunyadi Janos being upon the market prior to the time the defendants' started to manufacture the same?

Objected to by complainant's counsel as incompetent.

A. I have.

Q. 30. By whom was it manufactured?

A. Enno Sander, of St. Louis. Yes; but I know of another one.

Q. 31. What was that last?

A. Consumers' Company, of Chicago, and Dr. Thackeray, of Chicago.

Q. 32. Did you state that you had this knowledge before you commenced to manufacture?

A. I had that knowledge as far as Dr. Enno Sander is concerned. That means, prior to the manufacture of defendants.

Q. 33. Do you know whether or not the term "Hunyadi" is ever used without affixes or suffixes?

Objected to by complainant's counsel as indefinite.

144 A. I do.

Q. 34. In what connection?

A. In periodicals, in essays, drug journals, encyclopedias, referring to waters as they are found around the neighborhood of Ofen, or Buda-Pesth, having many different suffixes, and the term "Hunyadi" alone is used in the designation of such waters.

The answer of the witness is objected to by complainant's counsel as incompetent, as attempting to describe the contents of printed publications.

Q. 35. Can you produce or can you refer to these publications by name and by page wherein you have seen the term "Hunyadi" applied generally, as you have described?

A. I can produce them.

Q. 36. Do it.

A. The witness refers to memoranda.

Complainant's counsel objects to the witness referring to memoranda which are not proven in any manner, as incompetent and not the best evidence.

Q. 37. What memoranda is this to which you are referring.

A. I have looked up the different books and papers for the purpose of showing that the term "Hunyadi" is in general use.

Complainant's counsel objects to the answer of the witness as not responsive, volunteered, and argumentative.

WITNESS, continuing his answer:

I then made memorandums wherever I came across the word "Hunyadi" in such different papers.

Q. 38. Give the result of your examination from your memorandum book.

Same objection as to the last answer.

A. I note in the proceedings of the American Pharmaceutical Association, vol. xxxvii, 1889, page 253, it says: * * * "Where the bitter waters of Buda-Pesth, the various 'Hunyadis,' Stephans, Victorias, Rakocys, and some 30 more are competing now in a hot struggle for ultimate superiority."

145 Encyclopedia Britan., American Edition, 1884, ninth edition; vol. xvi, page 436:

"The numerous waters of Ofen are the best known, and some of

them are stronger than the 'Hunyadi,' of which an analysis has been given in Table 1."

Pharmaceutical Era, vol. i, 1887:

Index. "Hunyadi water, artificial, page 414."

Page 414. "Wanted.—A formula for artificial Hunyadi water. (J. W. O.)"

"The formula of Prof. Charteris (Lancet) is as follows: Magnesium sulphate, 536 grains."

The quantity of salts in this is somewhat greater than that shown by Liebig's analysis of the natural water.

Dr. F. Raspe, "Heilquellen Analysen," 1885, page 133, uses term "Hunyadi Quellen," gives analyses of Janos No. 12, Janos No. —, Lazlo, Matyas.

Dr. Wachter, Heidelberg (Zeitschrift f. d. ges. kohlen. Indust., Berlin, 1899), also pamphlet reprinted from this, page 14:

* * * "If then a chemist wants a glauher salt, and for this reason with sulphuric acid forces the chlorine in the chloride of sodium from its union with the sodium, and thus produces glauher salt, is therefore this artificially produced glauher salt a different one than that found in the wells of Carlsbad, those of 'Hunyadi,' or that brought to the surface in the solid state of aggregation by the Stassfurt saline works?" * * *

Merk's Report, 1900, page 381:

Formule for artificial mineral waters.
"Hunyadi."

Proceedings of Amer. Pharmaceut. Ass'n, vol. li, 1903, page 612:

"Report on Progress in Pharmacy."

"Formule for—

"Vichy,

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"Hunyadi,

"High Rock,

Bitter Waters," Etc.,

Merk's Report, 1903, page 143:

"Formule for artificial mineral waters for charging in fountains:

"Hunyadi,

"Vichy,

"High Rock," Etc.

Complainant's counsel objects to the foregoing answer of the witness as incompetent and not the best evidence, and gives notice that at the final hearing of this suit a motion will be made to cross the same from the record.

Q. 39. Do you know whether or not druggists prepare or have prepared Hunyadi themselves?

Objected to as incompetent.

A. I can only judge and believe it was by the amount of formulae for Hunyadi and Hunyadi Janos that have been requested, and published in various trade journals and monthly periodicals and books. And also in those books which treat on the manufacture of artificial mineral waters.

Q. 40. Can you state where you have seen such formulae published?

A. Yes, sir; I can.

Q. 41. Please do so; and if you refer to anything to refresh your memory, please indicate what it is.

Same objection.

A. I have looked up the books, papers, and periodicals at my command and have noted and made memoranda wherever such formula appeared.

They are as follows:

B. Hirsch. *Die Fabr. kuenstl. Mineralwasser*. 1876 Page 286-7. Two analyses and formulae for "Hunyadi Janos."

Muspratt. *Chemistry*, German Edition, vol. iv, 1877. Analysis of Molnar, 1874, and formula; analysis of Knapp, 1870, and formula (Ofen, Hunyadi Janos).

Druggist Circular, vol. xxvi, page 21, 1882: Artificial Hunyadi Janos Water. Formula.

147 New Remedies. Vol. xi, page 51. 1882: Artificial Hunyadi Janos. Formula.

American Pharmaceutical Ass'n. *Proceedings*, Vol. xxx, 1882; page 58: Preparation, artificially, Hunyadi Janos Mineral Water.

H. Hager. *Phar. Praxis*, Vol. iii, 1883; p. page 109. Formula for Hunyadi Janos, according to Fresenius' analysis.

Pharmaceutical Era. Vol. i, 1887; page 414: Formula wanted for artificial "Hunyadi." (J. W. O.)

Formula.

Western Druggist. Vol. ix, 1887; page 114: Analysis of Hunyadi Water. "A new analysis of the Hunyadi Lajos Bitter Water has just been made at Vienna by Dr. Godeffroy."

Pharmaceutical Era. Vol. ii, 1888; page 319: Formula, Hunyadi Janos Water.

American Druggist. Vol. xvii, 1888; page 142: Formulae for artificial Pullna, Hunyadi Janos, Pymont, Ems Kraenchen, Karlsbad, Kissingen, Vichy, Friedrichshall.

F. Raspe. *Heilquellen-Anal. zur Mineralwasserfabrikation*, 1885; pp. 531-3: "Hunyadi Quellen." Janos No. —, Janos No. 12, Lazlo, Matyas, and over ten more Ofen waters, analyses and formulae.

Sulz, C. H. N. Y. *A Treatise on Beverages*. 1888, pp. 558-559: Analyses and formulae for making Hunyadi Janos, anal. C. Knapp, 1870; Hunyadi Janos, anal. Molnar; Hunyadi Janos, Dr. M. Charteris, London.

Am. Pharm. Proceed's. Vol. xxxvii; page 369: Formulæ for Hunyadi Janos, Pullna, Pyrmont, Ems, Friedrichshall.

Druggist Bulletin. Vol. iv, 1890; page 28: Formula for Hunyadi Janos Water.

Merk's Report, 1895; page 249: "W. D. H. The following mixture of salts, dissolved in one liter (say 1 quart) of water, furnished a good bitter water, similar in properties to Hunyadi Janos. (Follows formula.)

Hirsch & Siedler. The Fabr. Kuenstl. Min.-w., 1897; pp. 299-302: Formula and analyses Ofen Bitterwasser (Franz Joseph's Quelle), Hunyadi Janos Bitter Q., Molnar; Hunyadi Janos Bitter Q., Knapp; Hunyadi Janos Bitter Q., Fre's.

Merk's Report, 1900; page 381: Formulæ for making Vichy, "Hunyadi," Lithia, High Rock, Deep Rock.

Dr. Ferd. Evers, 1902. Der practische Mineralwasserfabrikant; Formula Ofen Bitterwasser "Hunyadi Janos."

148 Amer. Pharm. Ass'n Proceedings. Vol. li, 1903; page 612: Formulæ for Vichy, "Hunyadi," High Rock.

Merk's Report, 1903; page 143.

Counsel for complainant objects to the foregoing answer of the witness as incompetent and not the best evidence, and gives the same notice as to question 38.

Q. 42. In preparing defendants' Hunyadi, what character of chemicals and of water do you use?

A. I use distilled water and chemically pure chemicals.

Q. 43. Whose formula do you follow in making the defendants' Hunyadi?

A. I follow the formula of the normal analysis given in F. Raspe's "Heilquellen Analysen" for the mineral water manufactory, a recognized authority on the manufacture of mineral waters. The formula is that we calculated for the manufacturing of artificial water according to the analysis of Fresenius, of the Hunyadi Janos Springs.

The answer of the witness is objected to by complainant's counsel as incompetent and volunteered, and particularly to the characterization of the analysis as argumentative.

Q. 44. Does the analysis of a water indicate its character or not?

Objected to as incompetent.

A. It does.

Q. 45. Are you stating your own opinion, formed from your own experience, or are you influenced in your opinion by that of others?

A. It is the opinion of high authorities.

The answer and question is objected to as incompetent.

Q. 46. Of what authorities? And if you refer to any memoranda, please identify them.

The question is objected to by complainant's counsel as incompetent and calling for secondary evidence.

A. I have made memoranda in which these authorities

149 state the fact that analysis is necessary to indicate the character of a water and its contents, and I find that they are as follows:

The Lancet, London, December 5, 1896:

(The Lancet Special Analytical Commission on Natural Mineral Waters. II. Hunyadi Janos Water.)

"The most satisfactory manner to establish the honesty of a natural water is, beyond a doubt, to obtain samples on the place, make independent analyses of the same, and compare the results with the samples which were obtained in the usual way from the market. If the results agree, there can be no doubt that the water brought into the market is exactly the same as that obtained at the well."

Dr. Courtwright's opinion on Jordan Rockbridge Alum Springs. Pamphlet. 1875:

"The water possesses all the ingredients of the justly popular Vichy waters, and we must infer their virtues. * * * Whether we call them alum, sulphur, chalcobate, iodine; red, blue, white, or yellow; warm, hot, or cold, the question of paramount importance to the invalid is, where the best mineral waters suited to their individual case is to be found. Their virtues lie not in the name. This has to be determined not only by a knowledge of their disease but by an analysis of the water showing its component parts, and its applicability as tested by experience in similar cases." * * *

Prof. Kionka, Jena. Ztsch. f. d. g. Kohl. Ind. Vol. ix, 1903, page 735:

* * * "The value of a mineral water with regard to chemistry can only be established by way of analysis. It has also been tried to arrive at something by way of physical analysis. The experimental fields are too large, however, to allow any one to arrive at any conclusions."

R. Rother. "The Pharmacist." Chicago, 1870. Vol. iii, page 172:

* * * "The supposition is prevalent that the peculiar taste of any particular mineral water depends upon the manner in which the combination of its ingredients is effected. But in the writer's experience this is an untenable hypothesis. To test the validity of this view, various complex and widely different mineral waters
150 were each kind prepared from synthetic formulas, differing apparently among themselves, but calculated from but one corresponding analytical formula. The results for each product were perfectly identical in every respect."

Dr. Wachter, Heidelberg. Ztschr. f. d. g. Kohlens. Industr. 1899. Reprint, page 5:

* * * "But the problem which had been accepted with this, that hereafter only by means of accompanying experimental observa-

tions one should seek his knowledge and experience, was by no means an easy one as long as we knew as much as nothing of chemistry; for without a certain amount of chemical knowledge it was an impossibility to establish in any way a sound theory on the therapeutic actions of mineral springs. Only with the knowledge of the principal ingredients in the latter was it possible to systematically classify springs and to trace the action of a water back to the mineral contents by one or the other surely repeating observations."

Complainant's counsel objects to the foregoing answer of the witness as incompetent and not the best evidence, and gives the same notice as to question 38, the witness having read into the record certain statements from typewritten memoranda alleged to have been prepared by himself and to be copies, or extracts from printed publications; also as immaterial and irrelevant.

Q. 47. Are you familiar with the analyses of the imported Hunyadi that have been in this country?

A. I am, to the extent of their main ingredients.

Q. 48. Are you familiar with other imported bitter waters; that is, with their analyses?

A. In a way, as to their ingredients characterizing such waters.

Q. 49. Please state whether or not the Hunyadis imported differ in their analyses from each other as much as the analyses of the other bitter waters, not known as Hunyadi, differ from analyses of the Hunyadi?

Objected to by complainant's counsel as leading and suggestive, and as incompetent, as the analyses referred to, if produced, would speak for themselves.

A. The Hunyadi bitter waters and the Ofen bitter waters, coming from the same neighborhood, are characteristic
151 in the main ingredient and differ greatly from each other, and among each other, in the different seasons of the year. Depending upon more or less atmospheric precipitations, they are sometimes much weaker and at other times more concentrated. The bitter waters coming from other parts are characterized by either containing much more chloride of sodium, while others are characterized in containing mostly or mainly sulphate of sodium.

The answer of the witness is objected to by complainant's counsel as manifestly incompetent, as characterizing alleged analyses not produced, and as stating arguments and conclusions, rather than facts, and gives notice that, at the final hearing of this suit, a motion will be made to cross the same from the record.

Q. 50. Read the question, and see if you have answered it.

Same objection.

A. Well, the latter part of my answer refers to such bitter waters as come from Bohemia and Spain, and which also have been imported into this country.

Same objection as to last answer.

Q. 51. In your answer you say the bitter waters coming from other parts contain much more chloride of sodium. Much more than what?

The same objection, and as leading.

A. Much more than the imported Hunyadi and Ofen bitter waters. I mean to say that the Hunyadi and Ofen bitter waters are characterisic in containing approximately the same amounts of sulphate of sodium and sulphate of magnesium; differing, however, in the amount of water in which they are held in solution.

Same objection as to preceding answer.

Q. 52. What does the term "Hunyadi" mean?

Objected to by complainant's counsel as incompetent, and as also calling for a conclusion.

152 A. The term "Hunyadi water" means such waters as are found around the neighborhood of Buda Pesth, and were entitled by the name Hunyadi with different suffixes by the owners of the different wells from which they are drawn. They are characterized by approximately the same contents of the main ingredients, one or the other being more or less in concentration.

The second sentence of the answer is objected to as incompetent, not responsive, and volunteered.

Q. 53. What character of water would you feel entitled to call an artificial Hunyadi?

Same objection as to the previous question.

A. Any one which conforms to the analysis of those waters which have been named "Hunyadi," with any of its suffixes by the owners of the wells from which they are drawn.

Q. 54. Have you any authorities or memorandum of them, treating of the respective merits of the natural and of the artificial waters? If so, produce them.

Objected to by complainant's counsel as incompetent, and objects to the reference by the witness to any memoranda made by him as not the best of evidence.

A. I have. I have memoranda of the following quotations of authorities, which have been published in different books and papers which are published in the interests of mineral waters and their uses:—

Dr. Wachter, Heidelberg. *Ztschr. f. d. g. kohl's. Industr.* Berlin, 1899. U. D. *Pharmakodynamie Kols'r Mineralwaesser.* Reprint, Berlin, 1899. Page 43.

* * * "As every one may know, fluid water is composed of two gaseous elements, oxygen and hydrogen, a mixture of which gases can be brought to unite by but a weak electrical discharge into a fluid form, into water. Now, no one will assert that this water, seemingly produced by man, the artificial, is different from the atmospheric or terrestrial, the natural water. No one will doubt

that it is water at all, because the coarsest reasonable acceptance will enable one to identify it as such." * * *

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Same:

* * * "The manufacturer has done his duty as soon as he proves that his artificial water agrees with the natural water in every way in chemical and physiological respects; and it is, as soon as he has fulfilled these conditions, a deep, reacting wrong if physicians and laymen assert that a proven difference exists, but that it is not detectable with our present analytical means, and never was a physician in a position to maintain of an artificial water which fulfilled the requirements of a chemical analysis, that the artificially produced water has a different action upon the system than the natural, but you always hear them say, 'I take it for granted that they act differently, because they are not natural.'"

Same:

* * * "If we select from them (the group of bitter waters) any one of the *Ofen* wells which partly contain up to fifty-five grammes of mineral salt in a liter, and reproduce them according to their analysis with such painstaking exactness that even the three milligrammes of carbonate of iron in a liter are considered—upon which the indication of the water certainly does not depend—and thus previously meet every objection on the part of the physician regarding existing inexactness, then the one drinking this artificial *Ofen* bitter water will experience exactly the same effects which he can expect from the natural waters. This artificial bitter water acts precise and sure already in doses of one hundred and fifty grammes, even without the '*imponderabilia*' and the '*vis vitalis*,' and is, therefore, especially adapted for the counteraction of incarnate imaginations of physicians and laymen regarding the inferior value of artificial mineral waters, because their desired effects follow their application very quickly, and do not need weeks of experimentations, with all their discomforts and accidentals, which are necessary to establish the therapeutic value of a water of different composition."

Same (page 28):

"How perfect, yes, superior, just this group (bitter waters) of curative waters can artificially be produced has already been previously mentioned in this paper in order to characterize the passive behavior of physicians towards artificial mineral waters."

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Dr. Max Roloff, Prof. Physik. Chem., University Halle a. S. Essay, 1903; page 6:

* * * "It is taken as proven that two absolutely identical chemical solutions may exhibit different physical properties to which 'naturally' special curative properties are ascribed. Yes, it is even asserted that these newly discovered miraculous properties in fact belong solely to the natural springs, and not to those salt solutions of the same chemical composition prepared in the laboratory. That these new properties really were discovered on simple salt solutions, and not on mineral waters, was hushed up, and naturally there was a lack of proofs for this new isolation of the curative springs, false citations were made in the grossest manner, as we shall see." * * *

Same (page 29):

* * * "The so far unknown ingredients may possibly have a strong specific action, but must just this be beneficial or increase the action of other salts? How can we assert this of a substance which we don't even know?"

Same (page 29):

* * * "Has not the surrogate manufacturer just the same right to assert that his product surpasses the natural spring because it does not contain those harmful mysterious impurities? Further, I have never found that a spring was recommended because of the curative power of the unknown ingredients; the therapeutic effects were always founded upon the known and in proven quantities present salts, and because of these quantities compared with similar springs. The balneologists, then, do not themselves believe in the action of these mysterious matters. This only serves as an argument in fighting competition."

Dr. Max Roloff. *Die physikal. Analyse d. Mineralwaesser*, Ztsch. f. d. g. Kohl. Industr. 1903. Repr. page 39:

* * * "By this it is experimentally proven:

"First. That salt solutions, formed by different salts, but corresponding to the same ionic table, have the same physical properties.

Second. That in this respect no difference exists between artificial and natural waters."

Same (page 39):

* * * "Most physicians are not sufficiently educated in physics to judge of the extent in which the scientifically-sounding words 'Electric Dissociation,' 'Osmotic Pressure,' are abused."

Same (page 289):

* * * "The physical chemistry has not, as Dr. P. F. Richter asserts, shown the difference between artificial and natural mineral waters, and proven why both cannot be identical in their pharmacodynamic effects, and why a substitution at pleasure of the latter by the former, as it is often practiced, is not justified.

"Exactly on the contrary; wherever physical chemistry has been treated with knowledge and logic, and has not been pressed into the service of water advertisements (*Brunnenreklame*), there is not the slightest point to show a principle of physical or chemical difference between artificial and natural mineral waters.

"I may certainly hope to have produced a contribution to the proof of this assertion in the foregoing critical analysis, and also to have amply pointed out the manner in which the spring advertisements attempt to convince the laymen of the separation of the natural mineral waters."

C. Gluecksmann, *Min. u. Heilw.*, Ztschr. f. d. g. Kohl. Ind. Page 29. Reprint page 6:

* * * "Prof. Jaworski is perfectly right when he draws a parallel between drugs and their active principles on the one side and the mineral waters on the other. A history of the last years has undoubtedly taught us that crude drugs disappear more and

more from the field of medicine, and are replaced by the alkaloids, glucocides, bitter principles, etc., bodies of uniform chemical structure. So would the natural mineral waters gradually meet with the same fate and be displaced by the artificial waters, if it was not for a powerful party of capitalists, who intervene in favor of the so-called natural, because of their personal interests. True progress, however, may be hindered and sometimes be pushed aside for a time, but never stopped for all the time."

Die Zeit, Wiener Tageszeitung, No. 473. Kohl, Indsut. Vol. x, 1904. Page 81:

"It is an old question which of late has again been brought up by a number of physico-chemical examinations, whether a mineral water artificially produced is able to be considered a substitute for a natural water.

"The managers of springs and a number of physicians practicing at the springs (Brunnenärzte) say 'No.' The newest investigations, however, answer with 'Yes.'"

Same. Kohl, Ind., page 82:

* * * "That the artificial mineral waters behave themselves in every particular, and exactly as the natural, Roloff has proven by a number of further experiments." * * *

Same. Ztschr. f. d. g. Köhlens. Industr. No. 1. Page 3, vol. vii, 1901:

* * * "Since more than three years has the Natural Hunyadi Janos bitter water been totally displaced in our academical clinics by the manufacture of my laboratory."

Prof. Carl Ernst Bock. Das Buch des ges. u. krank. Menschen. Leipzig, 1878:

* * * "Artificial mineral waters take the place of the natural mineral waters in every respect, although many physicians are prejudiced against the former."

Meyer's Conversations Lexicon, Vol. ii, 1879; page 586:

* * * "By exactly taking into account the analysis of the natural waters and the presence of the proven ingredients, one arrives at imitations which are able in very many cases to entirely replace the natural mineral waters, and by exact manufacture are always of the same quality, while the natural mineral waters are of considerably fluctuating composition in different years or different seasons."

Dr. W. Jaworski, Prof. int. med. University, Krakau. Wiener Med. Presse, 1902; page 72. Reprint pamphlet. Berlin, 1902; page 20:

* * * "The scientific investigation so far has not been able to prove any specific properties in mineral waters which were not also possessed by the artificial solutions. Both salt solutions follow the same natural laws. The contrary assertions are spread for reasons of personal interests.

"There is no proven difference to be found in the action of the artificial salt solutions and the mineral waters upon the system. The experimental investigations have not been able to prove a difference, but, on the contrary, they have proven the identity in action of the natural and artificial salt solutions.

"The mineral waters are crude products (*Medicamenta cruda*) of accidental composition, which in modern therapeutics may be placed among the many obsolete products of nature.

"The therapeutic success by drinking mineral waters only, are sparing and illusive."

Prof. Jaworski, Prof. int. med. University Krakau:

* * * "The laws of osmotic pressure and electrical conductivity, and the entirely theoretical science of dissociation regarding the splitting of molecules into ions, were obtained by tests on artificial salt solutions, and they are only now applied to natural mineral waters; they therefore apply to both fluids. The emphatically advanced dissociation of molecules to physicians of the 'old style,' exist as well in the artificial salt solutions as in mineral waters."

Objected to by complainant's counsel as incompetent and secondary evidence, and objects to having this record encumbered with alleged copies of mere extracts and treating the same as the evidence of this witness, and again gives notice that at final hearing a motion will be made to cross this and all similar incompetent evidence from the record.

Q. 55. Are the findings of these authorities borne out by your personal experience.

Counsel for complainant objects to the comparison with matters not properly proven.

A. They are.

Q. 56. I note that the quotations which you give are principally from German sources; please state the reason for this.

A. The American literature on Mineral Waters and their uses and therapeutics is very meager, and physicians are not nearly as well posted on Mineral Waters as those in foreign countries, and especially in Germany, and perhaps France, where there are health resorts visited by hundreds of thousands of invalids, and specialists who apply mineral waters as medicines as well as baths.

158 Direct examination closed.

Cross-examination by Mr. SCHRECK:

Counsel for complainant, at the close of the direct examination, again renews his objection to the incompetent, argumentative and volunteered so-called testimony of this witness, to which he has objected from time to time during the course of the examination, and also and particularly objects to all the alleged extracts and quotations read by the witness into the record, not from any original publications, but from typewritten memoranda alleged to have been made by the witness, but not identified or verified in any manner, and here again gives notice to the defendants' solicitor that at the final hearing of this suit a motion will be made to expunge all such matter from the record.

Counsel for complainant further gives notice that at the final hearing of this suit a motion will be made to strike out the testimony of this witness on all the grounds heretofore noted, and, without

waiving any of such objections, proceeds to cross-examine the witness *de bene esse*.

X Q. 57. Are you a physician?

A. I am not.

Q. Q. 58. What were your duties when you first went into the drug business, in 1868?

A. I served an apprenticeship for three years with a teaching chemist, Carl Jungk, who then owned a drug store at corner of Walnut and Allison. I then went into the drug store of Adolphus Fennel, who was also a teacher in chemistry and a founder of the Cincinnati College of Pharmacy.

X Q. 59. How long did you continue to be actively engaged in a drug store?

A. Until about 1894 I divided my time from the drug store with attention to mineral waters in the factory of W. T. Wagner; then, soon after it was W. T. Wagner's Sons had my services through the day, still owning a drug store and paying attention to it in the evenings; and after that I sold out the drug store and am paying attention to the mineral water business of W. T. Wagner's Sons only.

X Q. 60. Are you at present the general manager and superintendent of the defendant's business?

A. My duties there are the compounding of the artificial
159 mineral waters and attending to advertisements and general interests of the business.

The examination of Mr. Greyer is here suspended in order to proceed with the examination of Dr. Cameron.

Adjourned until Saturday, 10 A. M., December 17, 1904.

Met pursuant to adjournment.

Present, same as before.

X Q. 61. Then, practically, you have general charge of the business of the defendants, with the possible exception of the financial part?

A. There is a great deal more to be attended to besides the financial part, and which does not come into the range of my duties. I practically answered this question before.

X Q. 62. Have you anything to do whatever with the selling of defendants' product.

A. I have not.

X Q. 63. When did you first become acquainted with the natural Hunyadi Janos water?

A. Between the years 1870 and '80.

X Q. 64. When did you first become acquainted with Hunyadi Matyas water?

A. I can not name any special time.

X Q. 65. State about when?

A. I have known it for a good many years, but could not say as to the year.

X Q. 66. When did you become acquainted with Hunyadi Arpad?

A. I think between the years 1875 and '80.

X Q. 67. When did you first become acquainted with Hunyadi Lajos?

A. I think that was later; I can not tell.

X Q. 68. And when did you become acquainted with Hunyadi Lazlo?

A. Lazlo? I could not state a time.

X Q. 69. About when?

A. I can't say. It is impossible.

X Q. 70. Have you any knowledge of natural waters coming from Hungaria and sold under the names of Hunyadi Miklos, Hunyadi Josef, or Hunyadi Sandor?

160 Defendants' counsel objects to the questions as calling for matters not brought out on the direct.

A. I have heard, and have seen those names in print.

X Q. 71. Can you state where you saw any of them in print?

A. I think, in magazines, and articles speaking on Hungarian Bitter Waters.

X Q. 72. Do you know what the analyses of the three last named waters are?

A. Only approximately, of one or the other.

X Q. 73. Are the analyses of these three waters alike in substances and quantities thereof as the alleged analysis appearing on the label of the defendants, put on the bottles of manufactured water sold under the name of Hunyadi?

A. I would have to refer to the analyses.

X Q. 74. Then you can not state whether they are alike or whether they differ?

A. I am of the opinion that they differ in the same ratio as the Hungarian Bitter Waters differ among each other.

X Q. 75. Have you ever personally analyzed any of these three waters just before referred to?

A. I have never analyzed any mineral waters.

Defendants' counsel objects to each and every one of the previous questions and answers on the ground that they refer to matters not brought out on the direct.

X Q. 76. Describe minutely and in detail the process by which the so-called Hunyadi water is made at the establishment of the defendants.

A. We follow out in every particular the formula for the manufacture of our Hunyadi water conforming to Fresenius' analysis, given in the work of F. Raspe, Dresden, an authority on this industry.

The answer of the witness is objected to by complainant's counsel as not responsive, evasive, and argumentative, and the question is repeated, with the request that the witness answer the same.

Question repeated.

A. It is impossible for any man to have in his memory the working formula for a mineral water of any kind, but I am ready to sub-

mit my working formula to any chemist versed in that industry, and can say that it is absolutely correct.

Same objection as to previous question.

X Q. 77. Will you produce the so-called working formula which you have referred to in your last answer?

A. I will; you will have to give me time.

X Q. 78. Do you prepare a separate mixture for each bottle, or is the artificial so-called Hunyadi made at the establishment of the defendants in large quantities, and then filled into bottles?

A. It is made in quantities of forty or eighty gallons.

X Q. 79. If you take the ingredients set out in the Fresenius analysis, do you produce Hunyadi water or a water in all respects like a natural Hunyadi Janos?

A. In all respects like the natural Hunyadi Janos water as found by Fresenius when he analyzed that particular sample of Hunyadi Janos?

X Q. 80. Still, that does not answer my question. What I desire you to state is, whether you will swear that a water in all respects like Hunyadi Janos is produced by using the ingredients of the Fresenius analysis?

A. I will swear that Wagner's Hunyadi corresponds in acids and bases exactly to those found in Fresenius' analysis.

X Q. 81. Are you willing to swear that you know positively the exact manner in which the various chemical elements are combined in suspension in the Natural Hunyadi Janos water?

A. That question has neither been proven in the natural nor in the artificial water.

X Q. 82. Then you do not know?

A. I do know, as far as scientific researches have ascertained these facts.

X Q. 83. Then you do not claim that chemical research has proven this question to a certainty, do you?

A. Not absolutely so.

X Q. 84. Do you know at what temperature the Natural Hunyadi Janos, or any of the Natural Hunyadi Waters, take up or form combinations with the various chemicals in the earth?

A. I don't know. Not exactly. They are cold wells.

X Q. 85. But you do not mean to state, do you, that you know positively, and of your own knowledge, what the temperature of the water is in the ground in Hungary at the moment or during the time that this water dissolves or forms in combinations with the various chemical substances?

A. I do know they are cold wells, but can not give the degrees.

The answer is objected to as not responsive, and the question is repeated.

Question repeated.

A. Not of my own knowledge?

X Q. 86. Does anybody know?

A. I think so.

X Q. 87. How can anybody tell?

A. They can measure the temperature of the ground or the strata through which atmospheric precipitations penetrate and form the water as it is taken from the well.

X Q. 88. Could any chemist or any other person state at what particular part of the earth's interior a particular water combines with or forms any combination with a chemical?

A. He can as far as this pertains to the various Hunyadi waters.

X Q. 89. Taking the alleged analysis of Fresenius appearing on your labels, will you please state which of the eight substances there set out first are combined with the water percolating through the ground in Hungary which eventually is taken out of the Hunyadi Janos Springs?

Objected to by counsel for the defendants as being indefinite.

A. I do not know, but only know the result.

X Q. 90. And you do not know the sequence in which the various chemicals are taken up by the water as it percolates through the earth to finally appear in the Hunyadi Janos Springs, do you?

A. I do not.

X Q. 91. Does Hunyadi Janos, the natural water, contain any chemicals in solid form?

A. It contains solid forms in solution.

X Q. 92. Does it contain any chemicals in solid form, not in solution?

A. No, they are all in solution. It contains organic matter.

X Q. 93. If it did contain chemicals in solid form, but not in solution, would it float, or would it not rather sink to the bottom and remain there as a practically invisible residuum?

A. It would settle and be visible at the bottom.

X Q. 94. Would such a residuum be necessarily and under all circumstances visible to the naked eye?

A. I think so.

X Q. 95. Is it not possible that such a water may have certain chemicals in small quantities not in solution, but practically invisible to the naked eye?

A. Not that I know of.

X Q. 96. Are all the chemicals set out in the analysis of Fresenius of Hunyadi Janos Water, contained in the natural Hunyadi Janos in liquid form?

A. No. Because Fresenius has said that Hunyadi Janos contains also free carbonic acid gas.

X Q. 97. Taking the analysis of Fresenius, as it appears on your labels, will you please state which one of the eight substances there enumerated is not contained in the Natural Hunyadi Janos in liquid form?

The question is objected to by counsel for defendants as indefinite unless counsel for complainant will make clear what he means by "contained in liquid form."

A. Apparently there is none. But the calcium bicarbonate as such

is not stable. It is consistent of calcium carbonate held in solution by free carbonic acid, but exists in the water as a bicarbonate.

X Q. 98. But aside from this one exception, do you mean to testify that in the Natural Hunyadi Janos Water the chemicals as stated in the analysis contained on your label are contained in the Natural water in liquid form?

A. Fresenius says it also contains free carbonic acid gas.

The question is objected to by defendants' counsel, as already answered by this witness.

Q. 99. Question repeated.

A. I only take for granted what Fresenius says.

X Q. 100. And as to the chemicals contained in the defendants' product sold under the name Hunyadi, and the manner in which they are held in solution, we must take your word, is that correct?

A. I leave that to any chemist capable of making a true analysis of that water, and will submit the working formula for that
164 water as a proof that the finished product conforms to Fresenius' analysis.

X Q. 101. In answer to cross-question 92, you have stated that the Natural Hunyadi Janos water contains organic matter. Is this of a chemical nature, or not?

A. All organic matters are composed of elementary substances.

X Q. 102. Does the analysis of Fresenius show any such organic substances?

A. I don't think it was taken into consideration.

Question repeated.

A. I think not.

X Q. 103. Don't you know.

A. I do not.

X Q. 104. Have you ever analyzed Hunyadi Janos, the natural water?

A. I have answered that question before. I have never analyzed any mineral waters.

X Q. 105. Have you ever analyzed the floating matter in the original Hunyadi Janos, which you claim is organic matter?

A. I have not.

X Q. 106. Does not the analysis of a mineral water show only the solid substances which have been extracted from the water by evaporation?

A. It can be bacteriologically tested.

X Q. 107. But the analyses of Hunyadi Janos to which you have thus far referred show only the solid substances which have been extracted by evaporation.

A. Yes, and the gases.

X Q. 108. What gases does the analysis of Fresenius contain?

A. He says it contains free carbonic acid gas.

Recess until 1:15 P. M.

X Q. 109. Are not, generally, chemical analyses of mineral water obtained by evaporating the water, and then analyzing the solid substances that may be found?

A. I have never paid any special attention to analyses of mineral waters.

X Q. 110. Then you do not know how analyses of mineral waters are made, do you?

A. I know that the gaseous substances can not be analyzed by evaporating the water to solids.

165 Answer objected to as not responsive, and the question is repeated.

This line of examination is objected to by counsel for defendants as being improper cross-examination and because the witness has not qualified to answer such questions.

Question repeated.

A. I do, approximately.

X Q. 111. Please state, then, how a mineral water is analyzed?

A. Generally certain amounts of water, either by measure or weight, are taken, either small or large quantities, according to the judgment of the chemist; then, to get at the fixed solid substances, the water is carefully evaporated to the solid state, if so desired, redissolved, and the solutions obtained are subjected to the regular course of chemical divisions and tests, and in most all cases the rules laid down in the works of Fresenius are followed.

X Q. 112. In such a process, what becomes of any gases that might be contained in the mineral water?

A. The gases are set free, and to ascertain the quantity and the quality, certain tests will have to be made.

X Q. 113. When the analyst proceeds in the manner described by you in answer to your question 111, does he, after the water has been evaporated, find in the solid substances so much magnesium sulphate, so much sodium sulphate, and so forth?

A. He does not.

X Q. 114. In what form does he find them?

A. He finds the acids and bases, their quantities, and, after a certain norm accepted by chemists theoretically and which is to a great extent proven as being correct, applies the acids to the bases.

X Q. 115. In what particular form does the analyst find the solid substances when the natural Hunyadi Janos water is evaporated?

A. He does not try to find them in any particular form, but, in considering quantities of acids and bases found, he makes his combination, and the results are submitted to other tests and also to their therapeutic effects, and this applies especially to the Natural Bitterwater.

X Q. 116. Is it not a fact that when the analyst evaporates Natural Hunyadi Janos water he finds in the solid substances a
166 certain quantity of sodium, a certain quantity of magnesium, certain quantities of calcium, potassium, sulphur, chlorine, carbonic acid, etc.? And then guesses that there is so much sodium chloride, so much sodium sulphate, so much magnesium sulphate, so much calcium bicarbonate, etc., dissolved in the original water, because he assumes that the sodium present would combine with a certain number of atoms of sulphur, and a part of the sodium would combine with a certain number of atoms of chlorine, etc.?

A. He does not guess, but follows the accepted principles as are accepted by chemists throughout the world, and which are based upon scientific investigations.

X Q. 117. But it is true, is it not, that the analyst finds among the substances obtained after evaporation of the Natural Hunyadi Janos, sodium, sulphur, and chlorine, and then concludes that part of that sodium will have combined in the original water with some of the sulphur, and part of the sodium will have combined with the chlorine?

A. He finds the sulphur in combination with oxygen, as a sulphate. If it was a direct combination of the sodium with the sulphur, it would be contained in the water as a sodium sulphide, and could easily be judged by taste, color, and smell. The chlorine is a direct combination of sodium and chlorine, and is known as chloride of sodium.

X Q. 118. Does the analyst, among the solid substances first obtained after the evaporation of the Hunyadi Janos, find the compound sulphate of sodium, or does he find the sodium separate or combined with some other element, and the sulphur separate or combined with some other element?

A. I virtually answered this question before. The *modus operandi* is to separate the different bases into groups laid down in analyses, and then test each group separately for the contents in that group.

The answer is objected to by complainant's counsel and the question is repeated.

A. He finds them separately.

X Q. 119. In what form does he find the sodium, in combination with another element, or not? Just after the evaporation?

The question is objected to by defendants' counsel, as the question has been answered.

A. He determines it separately.

167 X Q. 120. My question, is, Is it present separately, or in combination?

A. In combination.

X Q. 121. With what?

A. It is impossible for him to assume that sodium could exist in a metallic state. It can only exist and is scientifically produced as a metal, and in this shape kept in substances which contain no oxygen. It is not known until further investigated.

X Q. 122. And is the same true as to the other elements of the solid substances found after evaporation; that is, are they found separately, as elements, or in combination with other substances?

A. The presence of some may be tested for in combination if such should be desired, but they are generally chemically re-dissolved and tested for separately.

X Q. 123. Which of the elements could be determined as present in the combination, as first found after evaporation, in Hunyadi Janos water?

A. The silica.

X Q. 124. Is that the only one?

A. Yes.

X Q. 125. Have you ever seen an atom of sulphur?

A. No.

X Q. 126. Nor an atom of anything?

A. No.

X Q. 127. Is not the whole atomic theory unprovable?

A. It is a theory.

X Q. 128. Do you believe in that theory, or do you believe in the theory of the Liebnitz theory of molecules?

A. I believe in the atomic theory.

X Q. 129. Have not in recent years new substances been discovered in the air, such as argon, and four others?

A. Yes.

X Q. 130. Is not a like discovery possible of water and every other substance?

A. It may be possible, I judge.

X Q. 131. Is there any radium in Hunyadi Janos?

A. I don't know, because I have never read of it as that being the case.

X Q. 132. Will you now produce the formula from which you prepare the defendants' water which is sold under the name of Hunyadi?

A. I will.

168 X Q. 133. Is Professor Ludwig regarded as an authority on matters of analyses of mineral waters?

Objected to as improper rebuttal, as not brought out in the direct examination, and the same objection is hereby entered to similar questions hereafter asked.

A. I think he is.

X Q. 134. Does not the analyses made by Professor Ludwig differ from the older analyses of Hunyadi Janos water?

A. I suppose it does, for the very reason that natural Hunyadi Janos water changes from year to year and from season to season, like all natural mineral waters.

All that part of the witness' answer after the word "does" is objected to as not responsive, and as being volunteered and argumentative.

X Q. 135. Is it not a fact that the analysis of Professor Ludwig does so differ?

Objected to by defendants' counsel, as the analysis will show for itself.

A. It does.

X Q. 136. Will you please state specifically which substance of the analysis of Ludwig of the Hunyadi Janos water is not contained in the preparation of the defendants' sold under the name of Hunyadi?

A. Strontium sulphate.

X Q. 137. Have you personally published any scientific works or essays regarding analyses of natural water?

A. No.

X Q. 138. Are you not aware of the fact that there are numerous natural Hungarian aperient waters having a supposed constitution similar to that of Hunyadi Janos?

A. I am aware of that.

X Q. 139. Why, then, did you single out an analysis of Hunyadi Janos for the preparation of your artificial water?

A. Because it is considered a good representative of all the other Hunyadi waters.

X Q. 140. Is not Apenta a natural Hungarian bitter water?

A. It is claimed to be.

169 X Q. 141. Is not the same true of Friedrichshall and Lajos Forras?

A. Friedrichshall is a Bohemian water, and Lajos Forras is claimed to be a Hunyadi water.

X Q. 142. By whom is Lajos Forras claimed to be a Hunyadi water?

A. That is my impression, and I would have to look it up to state so absolutely.

X Q. 143. Why did you select the analysis of Fresenius for the preparation of your artificial water?

A. Because Fresenius is considered one of the highest authorities, and I am better acquainted with his works than of those authorities who have made analyses of Hunyadi Janos Bitter Water.

X Q. 144. Is there any difference between distilled water and rain water?

A. There is.

X Q. 145. In what respect do they differ?

A. Rain water is an impure water.

X Q. 146. What does rain water contain?

A. It may contain any substances with which it comes in contact during its precipitation to the earth.

X Q. 147. Is not water found at different places on the earth different in effect, although it may show the same chemical analysis?

A. Yes, as much as I know.

X Q. 148. Have the organic substances in the water any effect on the chemical or inorganic substances found in that water, or *vice versa*?

A. In a way.

X Q. 149. In that case, then, there would be a change going on in such a water, would there not?

A. They are considered detrimental to the keeping qualities of the water.

Answer is objected to as not responsive, and the question is repeated.

A. Yes.

X Q. 150. Could any chemist, obtaining a bottle of a water sold by the defendants under the name Hunyadi, ascertain whether it is made by following the analysis of Fresenius?

A. He can analyze it and find out what it does contain.

X Q. 151. Would not such chemist find certain acids and certain bases from which he would have to make calculations based
170 on the atomic theory to ascertain in what form the various substances might have been contained in the water?

A. He would find acids and bases of the same character and in quantities as are stated to be present in Fresenius' analysis. The atomic theory is hardly taken into consideration, but the affinities of the acids to the bases are taken into consideration.

X Q. 152. Such a chemist would, after evaporating the water, find solid substances which he would have to submit to various tests in order to determine in what combinations the various chemicals would have been contained in the water, is that correct?

A. He might make such tests on the water itself. For instance, by the gradual condensation he could crystallize out a great part of the sulphate of sodium and sulphate of magnesia, and can chemically separate the magnesia.

X Q. 153. Would he not have to test the substance found after evaporation with various other acids and bases, in order to determine the exact nature of the substance, or parts of it?

A. As said before, after finding acids and bases, certain accepted norm is followed to establish the constitution of the water.

X Q. 154. Is the supposition contained in my last question correct or not?

A. Yes.

X Q. 155. How could the public ever find out whether your water was made according to the analysis of Fresenius or not?

A. In the same manner in usage with other mineral waters. They are brought before the public by publications advertising them and publishing their analyses, which are intended for the use of professional men, and the public accepts our claims as to their contents in the same manner carried out by the owners of different mineral springs. And they know that we are not in the habit of misrepresenting anything.

X Q. 156. You have heard of the so-called Hunyadi Geyza manufactured at one time by Dr. Thackeray, of Chicago. Dr. Thackeray has testified that his water was compounded by using the following ingredients:

Sulphate of sodium,

Sulphate of magnesia,

Sulphate of potassium,

171 Chloride of sodium,

Carbonate of sodium,

Carbonate of iron, and

Carbonic acid.

Would not that water have exactly the same taste as your artificial water?

Objected to by defendants' counsel as improper in rebuttal, because indefinite, irrelevant, and immaterial.

A. I don't know any of the particulars about Hunyadi Geyza,

regarding the mode of preparation, and could not say that Hunyadi Geyza would taste the same as defendants' water. The taste, however, in waters containing large quantities of sulphate of soda and magnesia in comparison with other chemicals present, it would take an exceedingly fine tongue to say that it did taste different.

X Q. 157. Do you claim to have any better right than any one else of the public to imitate Hunyadi Janos, and sell it as an artificial Hunyadi water?

A. We claim the right to name our water just what it is; an artificial Hunyadi water, carbonated, conforming to Fresenius' analysis of the Hunyadi Janos Springs.

X Q. 158. Do you admit, then, that no one has a right to sell as artificial Hunyadi water the water which is not exactly the same in composition as the Hunyadi Janos water?

A. I claim the right to manufacture any of the Hunyadi waters, provided I follow their respective analyses. But would publish that analysis on our labels which I had chosen for such water.

X Q. 159. If a person prepare artificial water in exact accordance with an analysis of Hunyadi Matyas, would he obtain a water in all respects similar to the artificial water prepared and sold by the defendants under the name of Hunyadi?

A. Any analysis of any natural mineral water can be artificially reproduced.

X Q. 160. Please answer my last question, yes or no.

A. Yes.

X Q. 161. Is the analysis of Hunyadi Matyas exactly like the Fresenius analysis of Hunyadi Janos?

A. I think not.

X Q. 162. And still you mean to maintain that a water prepared by an analysis which is different from the Fresenius analysis would produce a water exactly like the water made by the defendants under the name Hunyadi?

172 A. I did not assert that. I don't mean that a water prepared according to an analysis of the Hunyadi Matyas water could rightfully be sold under the name of Wagner's Artificial Hunyadi, unless the label stated that it was made according to the analysis of the Hunyadi Matyas Spring.

X Q. 163. I particularly call your attention to question and answer X Q. 159 and 160, and ask you whether, in view of your last answer, you mean to correct that?

A. I do. I should have said "No."

X Q. 164. Do you know at what time of the year the analysis of Fresenius was prepared?

A. I do not.

X Q. 165. Do you know of your own knowledge, or by any recognized authority at what time of the year any of the standard and generally accepted analyses of the Hunyadi Janos were made?

A. I do not.

X Q. 166. I ask you now whether you can state minutely and in detail the process by which the defendants' so-called artificial Hunyadi is made?

A. I herewith submit our formula which we use in manufacturing our water.

X Q. 167. Will you now please describe briefly the various steps employed in producing the defendants' product?

A. We make five solutions: Solution No. 1 containing the proper amount referred to in column 4 of my statement. This solution is put into a certain amount of distilled water, followed by solution No. 2, consisting of the proper amount noted in column 4, of sodium carbonate, as per the following formula, viz:

1	2	3	4
Analysis by Fresenius	Recalculated by F. Raspe for Mineral Water Manufactory for 100,000 parts	Corresponding to grains per gallon.	Corresponding to grains per 40 gallons.
Na o 142.41 parts Ca o 13.29 "	Ka Cl 11.37 parts Na Cl 19.85 "	=Ka Cl 20% solution 33.21 grains =Na Cl 20% solution 57.9786 "	= 1328.4 grains = 2319.2 "
Na o 863 1966.21 "	Ca Cl 107.81 "	=Ca Cl 25% solution 251.92178 "	= 10076.8 "
Mg o 863 1949.42 "	Na o 863 1991.19 "	=Na o 863 + 10110 2637.7092 "	= 105708.36 "
Ca o 863 13.79 "	Mg o 863 1949.42 "	=Mg o 863 + 7110 2334.5049 "	= 93382.6 "
Ca o 29.62 125.37 "	Fe o 863 0.27 "	=Fe o 863 + 7110 0.288468 "	= 11.338 "
Fe o 29.62 0.28 "	Na o 29.62 128.13 "	=Na o 862 10% solution 528.9469 "	= 21157.87 "
Si o 1.12 "	Na o 862 2.25 "	=Na o 862 10% solution 13.144 "	= 525.76 "

These are the substances as they enter into distilled water in sufficient quantity to make 100,000 parts, in the presence of carbonic acid gas.

The chemicals are made into solutions of known strength and the respective amount of such a solution is weighed out, as for instance a 25% solution of Ca Cl is taken of four times the weight in above formula, viz : 431.24 parts, etc.

This is the normal analysis as recalculated by F. Raspe and corresponds to Fresenius' Analysis of Well No. 12, 1878.

174 This is followed by solution No. 3, which consists of the chemicals in proper amounts, given in column 4, of potassium chloride, sodium chloride, sodium sulphate, magnesium sulphate; after which solution No. 4, consisting of sulphate of iron in the proper amount, given in column 4, is added; then solution No. 5, consisting of their proper amount, silicate of soda, as given in column 4. All this is brought up to a volume of forty gallons, and free carbonic acid being present in excess.

The solutions referred to in column 3 are solutions made by dissolving chemicals in distilled water and bringing them up to a known standard, as referred to in three.

X Q. 168. You have testified that the defendants are manufacturers of artificial mineral waters. Do the defendants not also sell natural mineral waters?

A. No.

X Q. 169. Have they ever sold such waters?

A. No.

X Q. 170. Have they not and are they not now selling the natural Selter of the "Reichs Quellen Gesellschaft" of Wiesbaden, Germany?

A. They are not selling a natural water at all. They never did. There are stock labels in the market reading "Natural Selters," which are sold to bottlers throughout the country, and upon the request in a few cases, by some customers, who have been getting a water with these labels on them, we have used such labels to fill their wants, but we have never sold them as the natural Selter.

X Q. 171. But you have put up an artificial water on which you have put labels bearing the inscription "Reichs Quellen Gesellschaft," Natural Selters, Wiesbaden, have you not?

A. We have under the conditions as stated, but do not advertise such a water, nor have we that on any of our price-lists, and the labels have never been printed by us.

X Q. 172. The defendants have also put up an artificial water upon which they have put a label bearing the name Minnehaha Natural Table Water, have they not?

A. No, sir. We make Minnehaha, with the claims of its being America's Purest Table Water. The word "Natural" does not appear on these labels.

X Q. 173. Has that description, "Natural Table Water," ever appeared on such labels?

A. No sir.

X Q. 174. Do not the defendants also put up and sell
175 an artificial water bearing the label with the inscription "Alkaline Saline Springs," and under this the words "Representative Carlsbad Analysis of E. Ludwig"?

A. We did, but sell the same now under the name "W. T. Wagner's Sons Artificial Carlsbad, conforming to the analysis by E. Ludwig, of the Sprudel."

X Q. 175. If a person orders from the defendant a bottle of Hunyadi water, do you sell him the defendants' preparation sold under the name of Hunyadi?

A. We sell no bottles retail. Our customers know what we are

doing, hence orders come in for a box or a case of Carlsbad, Vichy, Hunyadi, etc., and we deliver the same, that is our own goods.

X Q. 176. When you had your drug store, did you sell the defendants' waters?

A. I sold Wagner's Artificial Hunyadi and Natural Hunyadi.

X Q. 177. When a customer at your drug store asked for a bottle of Hunyadi water, what did you sell him?

A. I left it to him to choose between the natural and the artificial.

X Q. 178. Are there not several natural aperient waters found around the neighborhood of Budapesth having names of which the word "Hunyadi" is not a part?

A. Yes.

X Q. 179. Does the Fresenius analysis contain any statement as to the temperature at which the analysis was made?

A. I can't tell you just now without my referring to Raspe. Witness looking at Raspe. The temperature is given. 10.6 C.

X Q. 180. Are the defendants still publishing the exhibit, Defendant's Essay, offered in evidence by complainants?

A. I can not say when the last was printed, but we have not used it of late.

X Q. 181. But you still have it on hand?

A. I still have it on hand.

Cross-examination of the witness closed.

Examination of the witness closed.

(Signed)

JULIUS GREYER.

176

Dr. Edward W. Walker.

Dr. EDWARD W. WALKER, a witness produced upon behalf of defendants, being first duly sworn, deposes and says, in answer to questions by Mr. Murray, as follows:

Q. 1. Please state your name, age, residence and occupation.

A. Edward W. Walker; age, fifty; residence, 30 Garfield Place, Cincinnati, Ohio; physician.

Q. 2. You may state what, if any, public positions you have held in your profession.

A. Present Professor of Surgery at Miami Medical College; Surgeon at Cincinnati Hospital; Surgeon at the German Deaconess Hospital, and Consulting Surgeon at the Lick Run Hospital.

Q. 3. Have you ever used or prescribed the Hunyadi Janos of the complainants, or the Artificial Hunyadi of defendants?

A. Yes, sir.

Q. 4. State what the comparative therapeutic effects of the two are?

A. In my experience the effects of the two waters, as far as their cathartic properties are concerned, are about equal. The artificial carbonated water seemed to me to be more palatable to the patient.

Q. 5. What is the relative sizes of the doses for an adult, of the two?

A. Why, that depends upon the individual, as in any other drugs,

some require a larger dose than others. Of either medicine, my common practice has been to tell the patient to take three-fourths to four-fifths of a common tumbler full.

Cross-examination by Mr. SCHRENK:

X Q. 6. Have you personally tried either Hunyadi Janos or defendants' artificial water?

A. Yes, sir; I have tried both of them.

X Q. 7. In your opinion, has carbonic acid gas any therapeutic effect of its own on the patient.

A. It makes the water more palatable, and they can take it more readily. It is not so likely to nauseate them. One of the best remedies that we have for nausea is carbonated water.

177 X Q. 8. Does the carbonic acid gas, in your opinion, in any manner add or subtract from the therapeutic effect of an aperient water?

A. No, sir.

X Q. 9. Have you ever observed the effects of Hunyadi Janos, the natural water, and the effects of the artificial water sold by the defendants, when used by the same person?

A. Yes, sir. I have seen the effect of both the waters on my wife. The amount of each water for the desired effect was about the same.

X Q. 10. Have you had any experience with any other Hungarian aperient water than Hunyadi Janos?

Objected to by defendant's counsel as matter not brought out in the direct.

A. Why, I have always specified Hunyadi Janos in my prescriptions until I had tried the artificial waters that were carbonated.

X Q. 11. But you have never had any experience with any of the natural Hungarian aperient waters, than Hunyadi Janos?

A. I say, my patient may have gotten the other waters by my not specifying Hunyadi Janos. I always prescribed Hunyadi Janos.

X Q. 12. What other aperient waters than Hunyadi Janos do you know?

Objected to as to matters not brought out in the direct.

A. My other two favorites are Rubinat and Apenta.

X Q. 13. Are these two waters similar in their therapeutic effects to Hunyadi Janos?

A. They are both cathartic waters. Their therapeutic effect is catharsis; of all three waters.

X Q. 14. Would you call either Apenta or Rubinat a Hunyadi water?

Objected to for the reason above given.

A. I should say that the therapeutic effect of Apenta and Rubinat is about the same as Hunyadi.

X Q. 15. If you prescribed Apenta or Rubinat to one of your patients, would you expect a druggist to fill this prescription by giving Hunyadi Janos?

178 Objected to as immaterial.

A. I certainly wouldn't if he was an honest druggist.
(Signed) EDWARD W. WALKER.

Dr. Benjamin F. Clark.

Dr. BENJAMIN F. CLARK, a witness produced upon the behalf of defendants, first having been duly sworn, deposes and says, in answer to questions put by Mr. Murray, as follows:

Q. 1. Please state your name, age, residence and occupation.

A. Benjamin F. Clark; forty-eight years; 821 Kenyon Avenue, Cincinnati, Ohio; physician.

Q. 2. For how many years have you been a physician.

A. Twenty-two years plus.

Q. 3. Have you, during the course of your profession, held any public positions in connection therewith; and if so, state what?

A. Chief Surgeon of B. & O. S. W. R. R.; Surgeon for the Police and Fire Department; Special Examiner for the United States Government; Physician for the National Lead Company; President of the Staff for St. Francis Hospital; Charge of the Railway Department of St. Mary's Hospital.

Q. 4. In your practice, have you become familiar with any of the imported Hunyadi waters, and with any artificial Hunyadis? If so, give the names thereof.

A. I have used the Hunyadi Janos water for years. I have used Wagner's Artificial Carbonated Hunyadi a few years; I don't know just how many years for the artificial water. I have not used anything else for my own family for the last eighteen months, or a year. I can't stipulate any length of time.

Q. 5. Will you please institute a comparison between these two waters, and give any reason for any opinion you may state?

Objected to by complainant's counsel as incompetent, immaterial and irrelevant.

A. As to efficiency : I find considerable difference. The difference is that I find in the Wagner's artificial carbonated water a more palatable water, not so energetic in its action, causing less nausea, tenesmus, that is pains through the bowels ; they practically both have the same effect, but the Wagner's artificial carbonated Hunyadi is less severe in its action.

Q. 6. What is the size of the dose for an adult, of the complainant's Hunyadi Janos, and of the defendants' artificial Hunyadi?

A. I presume a thin glass ought to contain about four or five ounces; that to be repeated, if no effect, in two or three hours; the same with the artificial Hunyadi.

Cross-examination by Mr. SCHRENK:

X Q. 7. Doctor, is your specialty surgery? And for how long has this been the case?

A. Close on to twenty years.

X Q. 8. Then you have not had any extensive experience with Hunyadi water, have you?

A. Equal to none. My business being connected with the Lead Company, would naturally lead me to use sulphate of magnesia.

X Q. 9. Have you personally tried Hunyadi Janos?

A. I have.

X Q. 10. Also the so-called Hunyadi of the defendants?

A. I have.

X Q. 11. Do you know the effect of any other of the Hungarian aperient waters?

A. The one that has been used universally or with any degree of satisfaction has been the Hunyadi Janos. There are only about one hundred of them.

X Q. 12. Have you had any experience with any of the other Hungarian Bitter waters except the Hunyadi Janos?

A. No.

X Q. 13. Do you know how the waters sold by the defendants under the name of Hunyadi is prepared?

A. I do not. I can't give you the chemical analysis.

X Q. 14. Can you state what its contents are?

A. The basis is sulphates of magnesia and sodium.

X Q. 15. Do you know this from any other source than the description on the label of the bottle?

A. As to the chemical properties? Well, as I said before, sulphates of magnesia and sodium were the prime factors in the water; the water used is pure, distilled water, carbonated, consequently has no foreign or earthy matter.

X Q. 16. Did you ever analyze defendants' water?

180 A. I have not.

X Q. 17. Then your knowledge as to the contents of this water is not personal knowledge, but is obtained from a reading of the label on the bottle, is it not?

A. And its physiological action.

X Q. 18. Have you ever observed the therapeutic effect of the natural Hunyadi Janos water, and of the defendants' artificial water, when used by the same patient?

A. I can not say as to the same patient.

X Q. 19. Have you ever heard of an aperient water sold under the name of Relief?

Objected to as matters not brought out in the direct.

A. No.

X Q. 20. What is your opinion as to the therapeutic effects of the defendants' artificial water as compared with the natural Hunyadi Janos, when the same are taken in the same quantity.

A. The artificial Hunyadi is more palatable and just as efficient as the other, producing less nausea, and causing less trouble with the lower bowels.

X Q. 21. Has carbonic acid gas any effect on the stomach?

A. It depends altogether on the idiosyncrasy of the person. The artificial Hunyadi water, being carbonated, produces rather a pleasant sensation and rather tones up the intestinal tract.

X Q. 22. Then carbonic acid gas has a therapeutic effect of its own on a patient.

A. It certainly has.

Cross-examination closed.

Redirect examination by Mr. MURRAY:

R. D. Q. 23. Would the foreign or earthy matters have any effect as a laxative?

Objected to by complainant's counsel as immaterial and irrelevant.

A. Not directly as a laxative, but may cause irritation of the intestinal tract.

R. D. Q. 24. Has carbonic acid gas any effect as a laxative?

181 A. It increases peristaltic action of the bowels. That is, the muscular action of the bowels.

(Signed.)

BENJAMIN F. CLARK.

Examination of the witness closed.

Otis L. Cameron.

OTIS L. CAMERON, a witness called upon behalf of the defendants, first having been duly sworn, deposes and says, in answer to questions by Mr. Murray, as follows:

Q. 1. State your name, age, residence and occupation.

Counsel for complainant objects to the testimony of this witness on the ground that the same is not properly taken under the notice hereto annexed, said notice not providing for the taking of testimony in accordance with the Revised Statutes of the United States, nor the rules of this Court, nor before the proper officer, as provided by said Statutes and rules.

A. Otis L. Cameron; age, close to forty-three years, within three weeks forty-three; 18 East Ninth Street, Cincinnati, Ohio; physician.

Q. 2. For how many years have you been a physician?

A. My diploma is dated 1886; I had a year's practice prior to that as resident physician in City Hospital.

Q. 3. What positions of a public nature have you filled?

A. I have been Demonstrator of Bacteriology in the Medical College of Ohio since 1887, I think, or the spring of 1888. I was during that term Professor of Microscopy, Cincinnati College of Pharmacy, for ten years; I don't distinctly recall, it was up to 1900 or 1901 when I resigned. Was formerly Pathologist at the Cincinnati Hospital, and now am lecturer of Bacteriology at Ohio Dental College; am on the visiting staff of the Protestant Episcopal Hospital and of St. Mary's Hospital. Prior to that I was City Bacteriologist for three or four years; Deputy Coroner and Pathologist for Hamilton County, and am now Coroner-elect.

Q. 4. What experience have you had with imported Hunyadi

waters and with the artificial Hunyadi of W. T. Wagner's Sons, the defendants in this suit?

182 A. I have used both. I can't say how much: as much as one would in the ordinary course of practice.

Q. 5. State what is your experience as to the merits of the two.

A. In regard to that it would be difficult for me to give any preference one over the other, as where either is prescribed the desired result is obtained.

Q. 6. Have you prescribed Hunyadi Janos, the natural?

A. Yes, but ordinarily after a request from the patient as to its efficacy; personally I prefer using some form of the saline cathartics themselves.

Q. 7. Has the artificial Hunyadi of the Wagners' production the same or a different result from that of the natural Hunyadi Janos? That is, a therapeutic effect.

A. I believe the therapeutic effect to be the same.

Direct examination of the witness closed.

Cross-examination by Mr. SCHRENK:

Counsel for complainant gives notice that at the final hearing of this suit a motion will be made to strike out the testimony of this witness on all the grounds heretofore noted, and, without waiving any such objections, proceeds to cross-examine the witness *de bene esse*.

X Q. 8. Have you personally tried the natural Hunyadi waters?

A. I can't recall. If I have it is some years back. I carry out my preferences in my own cases.

X Q. 9. Have you personally ever tried the water manufactured and sold by the defendants under the name of Hunyadi?

A. Not as to get its effect. I have tasted it, as I have the natural Hunyadi Janos.

X Q. 10. Can you tell the therapeutic effects of such a water by merely tasting it?

A. No; my opinion was not based on taste in my own case, but its use in my practice.

X Q. 12. Have you ever observed the therapeutic effects of the complainant's Hunyadi Janos water and of the water sold by the defendants under the name of Hunyadi when used by the same patient?

A. Now, that I can't recall, of any case.

183 X Q. 12. Is it not a fact that every medicine acts differently with different persons?

A. There is an individual idiosyncrasy to certain drugs, but the general therapeutic action of a purgative water, or saline purgative, would practically be the same, possibly with the exception of the size of the dose required and the palatability of the drug.

X Q. 13. Have you ever had any experience with the natural bitter water known as Franz Deak?

The question is objected to by defendants' counsel as to matters not brought out on direct.

A. I don't know it by that name.

X Q. 14. With what other natural Hungarian saline aperient waters have you had any experience?

Same objection.

A. Years back I used for a little while Rubinat Condal. I have used Pluto, possibly some others as the samples have been left in my office, but not more than simply to try the samples, as far as I can recall.

X Q. 15. Have you ever had any experience with Hunyadi Matyas, Hunyadi Lajos, or Friedrichshall?

A. Usually the waters mentioned have been called Hunyadiis; I couldn't say as they were one or the other, as the obtaining of the water was left entirely with the patient, and not on prescription.

X Q. 16. Then you do not wish to be understood as testifying that you have any personal knowledge as to the sale of these waters by druggists, or under what names they were sold, do you?

A. I only know that the Hunyadi Janos is the one most commonly seen in the drug stores.

X Q. 17. Can you testify now as to any personal knowledge of the therapeutic effects of any particular Hungarian saline aperient water other than Hunyadi Janos upon any of your patients?

A. Why, I think my last answer covers that; that I have never personally written a prescription, as far as I can remember, for any specific Hungarian water.

X Q. 18. Do you know whether the effects of Friedrichshall are different from those of water manufactured and sold by the defendants under the name of Hunyadi?

184 Objected to by counsel for defendant for indefiniteness in not stating anything as to amount.

A. I am not familiar with Friedrichshall, except knowing there is such a water.

X Q. 19. Do you know the composition of Friedrichshall water?

A. No.

X Q. 20. Do you know the composition of defendants' water sold under the name of Hunyadi water?

A. No, except that the principal ingredients are probably sulphates of magnesia and sodium.

X Q. 21. Do you know the contents of the natural Hunyadi Janos water?

A. No, except that the principal ingredients were the same two salts.

X Q. 22. If a medicine was compounded consisting of water and the two salts, to-wit, sulphate of magnesia and sulphate of sodium, would that answer your purpose in prescribing a saline aperient?

A. I think so.

X Q. 23. What do you know as to the composition of the defendants' water sold under the name of Hunyadi?

A. Nothing, except knowing of the firm and their product and the analysis on the label.

X Q. 24. Then you have never analyzed this water, and your

statements as to its contents are based on the representations made by the defendants. Is that so?

A. To a certain extent, yes. But also on my knowledge of the firm individually.

X Q. 25. Did you ever analyze Hunyadi Janos water to see what the proportions of salts contained in it were—in any given bottle?

A. No.

X Q. 26. Then you judged as to the strength of the water only from the reports of your patients. Is that correct?

A. Yes, sir.

X Q. 27. And the same is true as to the effects and the strength of the defendants' water?

A. Yes.

X Q. 28. Why don't you prescribe Red Raven Splits instead of a natural or an alleged artificial Hungarian saline aperient water?

A. Well, that is a difficult thing to frame an answer. The
185 prescribing of either the artificial or natural Hunyadi water, as I said above, was rather on the request of the patient than of my own personal selection. I have not as yet been requested or asked advice regarding Red Raven Splits.

X Q. 29. Will you please explain what you mean by your statement, which you have made several times, that you prescribe an aperient water at the request of a patient?

A. The patient comes in very often, complaining of troubles requiring an aperient or laxative, and on being told that such is the case, frequently asks in regard to such and such a water, and in that case, if I know of the water mentioned being a good water, advise them to use that instead of writing a prescription for something else.

X Q. 30. Do you know what Red Raven Splits is?

A. No, sir. I have heard that it was a phosphate of soda water, but as to that I don't know.

X Q. 31. Will you please state whether the effects of Rubinat Condal and Pluto are similar to the effects of the water put up and sold by the defendants under the name of Hunyadi?

Objected to by defendants' counsel, because to matters not brought out on the direct, and also for indefiniteness in not defining the amount taken.

A. The effects are similar in this way, you get either a laxative or cathartic action from either of them.

X Q. 32. Would you call Rubinat Condal a Hunyadi water?

Same objection as to absence of matter in the direct.

A. I only know it as Rubinat Condal. It might come from Hunyadi Springs, as far as I know, or be an artificial water. I have only what is on the label to go by.

X Q. 33. How many instances can you recollect of actual knowledge of the effects of Hunyadi Janos, the natural Hunyadi Janos?

A. That is practically impossible to answer. It would be like asking a man how many times he prescribed quinine or any other medicine. Usually after a patient has left the care of a physician

the medication used is very often forgotten, unless there is something of special interest in the case, or the action of the remedy used.

186 Redirect examination:

R. D. Q. 34. What is the ordinary size of a dose for an adult of the complainant's Hunyadi Janos and of the defendant's artificial Hunyadi?

A. The ordinary dose of the Hunyadi Janos, I believe, is a wine glass to half a tumbler—I am not very familiar with it—and of the defendants' artificial Hunyadi, I think, is larger; as to that I am not familiar, not having used either one very much.

Recross-examination:

R. X Q. 35. Then it is your opinion that the therapeutic effect of the water manufactured by the defendants under the name of Hunyadi is not the same as an equal quantity of the natural Hunyadi Janos. Is that correct?

A. As to that I can't say; I don't know.

(Signed)

OTIS L. CAMERON.

Examination of the witness closed.

187 Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity. No. 5498.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

Evidence for final hearing on the part of the defendants taken *de bene esse* pursuant to United States Revised Statutes, Sections 863 and 864, as amended, before Henry H. Oberschelp, a Notary Public in and for the City of St. Louis, State of Missouri, and Special Examiner, by consent of the parties, at the office of Paul F. Coste, Security Building, St. Louis, Missouri, on the sixteenth day of December, 1904, pursuant to notice and agreement of counsel.

Present: Henry H. Oberschelp, Notary Public; Walter F. Murray, Counsel for Defendants; Otto V. Schrenk, Counsel for Complainant.

Enno Sander.

ENNO SANDER, a witness, called upon behalf of the defendant, first having been duly sworn, testifies as follows:

Q. 1. Please state your name, age, residence, and occupation.

A. Enno Sander; age, 83; residence, 4625 McPherson Avenue, St. Louis; occupation, manufacturer of mineral waters.

Q. 2. For how long have you been a manufacturer of mineral waters?

A. Since 1866.

Q. 3. Are you still manufacturing mineral waters?

A. Yes sir.

188 Q. 4. About how many different kinds of artificial mineral waters do you make?

A. Say twenty.

Q. 5. By what names do you call these mineral waters that you manufacture?

A. All waters that are manufactured from analysis of a natural springs are called by the name of the natural water; those of my own composition get their name appropriate to their ingredients.

Q. 6. Are you at all familiar with imported Hunyadi waters?

A. I have known it for many years; as long as I have manufactured mineral water.

Q. 7. Did you ever manufacture any artificial Hunyadis?

Objected to by complainant's counsel as incompetent, immaterial and irrelevant.

A. I did.

Q. 8. By what name did you call the water so manufactured by you?

Same objection.

A. It was labeled "Hunyadi Janos Ofen Bitter Water."

Q. 9. How long ago did you start to manufacture it?

Same objection.

A. I can not tell you exactly. It may be over thirty years, it may be less; but I know positively that I manufactured it twenty years ago, and I have looked over my papers and labels, but can not find any printed evidence before '86. It must have been there, but it is all gone.

The witness produces a catalogue having upon its cover the words, "Dr. Enno Sander's Mineral Spring Waters and their Chemical Compositions, St. Louis, 129 South Eleventh Street; 1886."

Q. 10. What is this catalogue which you have just produced, and where did you get it?

A. I have published this catalogue myself, as I usually do when I have to be responsible for the content, and also for the purpose of informing in the introduction that natural waters are worthless away from the spring, and artificial waters the only ones that should be patronized by sensible people.

189 Objected to by complainant's counsel as not responsive, volunteered and argumentative, and gives notice that at the final hearing of this suit motion will be made to expunge the same from the record.

The catalogue is offered in evidence by defendants' counsel, and the Notary is requested to mark it "Defendants' Exhibit, Sander Catalogue of 1886."

Objected to by complainant's counsel as incompetent, immaterial and irrelevant.

Q. 11. I call your attention to page 40 of the catalogue just offered in evidence, and ask you to read the top line.

Objected to by complainant's counsel as incompetent, as the paper speaks for itself.

A. "Ofen Bitter Water (Hunyadi Janos)."

Q. 12. I hand you a price list and call your attention to the writing upon the back, and request you to state what that is, and, if you can, when it was published.

A. This is a price list of my mineral waters, and I do not know how long it has been published; it must be ten or fifteen years ago.

The price list is offered in evidence, with the request that the Notary mark the same "Defendants' Exhibit, Sander Price List."

Same objection as to previous exhibit.

Q. 13. I hand you a catalogue with a tan cover, and ask you if you recognize that, and state what it is.

A. That is one of my circulars or catalogues, published in May, 1895.

The same is offered in evidence. The Notary is requested to mark it "Defendants' Exhibit, Sander Catalogue, No. 2."

Same objection as to last exhibit.

190

Q. 14. To what extent did you bottle and sell your manufactured Hunyadi Janos?

Objected to by complainant's counsel as incompetent, immaterial and irrelevant.

A. I can not tell you. And in fact I do not know whether I kept an account of that water, as I did of others of which I sold a great deal. I manufactured bitter water of my own composition, and sold Hunyadi Janos only when it was called for.

Q. 15. Did your artificial Hunyadis follow any of the analyses of the Hunyadi Springs in its composition?

A. I took the original analysis from Justus von Liebig, and was sure that I was correct in using it, for it used to be printed on the labels of the Hunyadi Janos water until the Secretary of the Interior of Austria compelled them to take the name off because the water was not any more according to the analysis of Justus von Liebig.

Objected to by complainant's counsel as an improper answer, not responsive, volunteered, and on its face at most hearsay evidence.

Q. 16. Did your manufactured water resemble the natural Hunyadi Janos when so produced?

A. I think not, because the water I manufactured was carbonated, while the natural water had no carbonic acid in it.

Q. 17. Aside from the presence of carbonic acid, did they resemble each other—that is, upon the assumption that the Hunyadi Janos itself was uniform?

Objected to by complainant's counsel as incompetent, leading and suggestive.

A. They surely resembled in taste, but as I did not analyze the

Hunyadi again, I do not know whether it contained the same ingredients that I put into mine.

Q. 18. If you knew that the analysis of the Hunyadi Janos of the complainant was correctly made, could you reproduce it artificially?

Objected to by complainant's counsel as incompetent, as the witness has not been shown to be properly qualified.

A. I must give a general answer. All the waters that I have manufactured after the analysis known of them were absolutely identical with the natural water, except with an excess of carbonic acid.

Q. 19. For how long a period and to how great an extent has the industry of the manufacture of artificial waters been carried on?

Objected to by complainant as incompetent, immaterial and irrelevant.

A. Since about 1810 or 1812. I think it was about that time. Even before that, but since that time in a more business-like way.

Q. 20. And to what extent?

Same objection.

A. The manufacture of mineral waters has constantly increased since I have been manufacturing.

Q. 21. Why?

Same objection.

A. Because eminent chemists like Carl H. Schulz, in New York, took to the manufacture of artificial waters.

Q. 22. Is an analysis of a natural mineral water any criterion of the character of the water?

Objected to by complainant's counsel for the same reason as noted to question 18.

A. If an analysis be made according to the rules of chemistry, it represents the active principles of the water.

Cross-examination by Mr. SCHRENK

X Q. 23. Have you ever had any dealings or correspondence with the complainant in this suit, or her attorneys, Messrs. Briesen & Knauth?

A. I have had, and I think to mutual satisfaction, with Messrs. Briesen & Knauth, and their amiable representative, Mr. V. Schrenk.

X Q. 24. I show you a letter dated January 28, 1901, and ask you to state whether you wrote that letter and mailed the same to Messrs. Briesen & Knauth?

A. I wrote the letter alluded to.

192 Complainant's counsel offers in evidence the letter identified by the witness, and the Notary is requested to mark the same "Complainant's Exhibit, Dr. Sander, First Letter." Said letter is as follows:

ST. LOUIS, *January 28, 1901.*

"Messrs. Briesen & Knauth, New York.

"GENTLEMEN: Your very polite and considerate letter of the 23d has been duly received this A. M. Its content has been fully and highly appreciated. Until about two years ago I have been manufacturing a laxative mineral water under the name of 'Hunyadi Janos,' which was prepared after the analysis of Justus von Liebig as published on the labels of Andreas Saxlehner's Hunyadi Janos. But after I was notified of the filing of the trademark, I have ceased to use the inclosed label, and manufacture instead a very popular water, the 'Relief,' the formula of which I inclose.

"If I have omitted this statement in the affidavit prepared by Wagner's Sons, I certainly have mentioned it in the letter I sent with it.

"You will perceive from the above that I have never intended to violate the proprietary rights of Mrs. Emilie Saxlehner, and I declare myself perfectly willing to attach my signature to a formal agreement, which I might do now if it had been inclosed with your letter.

"With thanks for your courtesy, I remain,

"Very truly yours,

"(Signed)

ENNO SANDER."

X Q. 25. In this letter you refer to a formula of the water "Relief," which you state is inclosed. I hand you a label headed "Dr. Enno Sander's Relief," and ask you to state whether this is the paper referred to and inclosed with your letter?

A. That is the paper which I inclosed; it contains the formula of my health-giving mineral water.

The label identified by the witness is offered in evidence by complainant's counsel, and the Notary is requested to mark the same "Complainant's Exhibit, Dr. Sander's Relief Label."

X Q. 26. Did you, after discontinuing the use of the word "Hunyadi Janos," continue to sell that same water under the name "Relief"?

193 A. I never steal the thunder from everybody and use it under another name. A comparison of my formula of "Relief" with that of "Hunyadi Janos" as published by the analysis of Liebig shows that the two waters are decidedly different from each other.

X Q. 27. Would you call the natural Hunyadi Janos a saline aperient water?

Objected to by counsel for defendants as to matter not brought out in direct examination.

A. I need not answer that question, because the public has done so, and I agree with the public. It is a saline aperient.

X Q. 28. Is your mineral water, which you sell under the name of "Relief," a saline aperient water?

A. It is, and a very effectual one.

X Q. 29. I show you a letter dated February 2, 1901, and ask you

to state whether you wrote that letter and mailed the same to Briesen & Knauth?

A. I very truly have written that letter.

Complainant's counsel offers in evidence the letter identified by the witness, and the Notary is requested to mark the same "Complainant's Exhibit, Dr. Sander, Second Letter."

X Q. 30. I hand you a copy of an agreement, dated February 1, 1901, and ask you to state whether you signed the original of this agreement and mailed the same to Messrs. Briesen & Knauth?

Objected to by attorney for defendants as being secondary evidence.

A. I am positive that I signed an agreement to that extent; I would sign it to-day.

Complainant's counsel offers in evidence the agreement identified by the witness, and the Notary is requested to mark the same "Copy Dr. Sander Agreement."

X Q. 31. I hand you copy of an affidavit sworn to March 28, 1901, and entitled in this suit, and ask you to state whether you signed the original of this affidavit?

194 Same objection.

A. I signed the original.

Complainant's counsel offers in evidence the paper identified by the witness, and the same is marked "Copy Dr. Sander Affidavit."

Same objection.

X Q. 32. When did you discontinue to sell an artificial water under the name of Hunyadi Janos?

A. According to the affidavits, I must have discontinued the manufacture of Hunyadi Janos in 1899.

X Q. 33. Have you sold any artificial water under the name Hunyadi Janos since that time?

A. I have signed an affidavit that I wouldn't, and therefore I did not.

X Q. 34. Did you have any communication whatever, or any dealings with Andreas Saxlehner, or his successor in business, Emilie Saxlehner, other than the correspondence heretofore testified to by you?

A. Not that I remember.

X Q. 35. Are you familiar with the various analyses that have been made from time to time of the natural Hunyadi Janos water?

A. I am, but I don't remember exactly the figures that are exhibited in the different analyses by different chemists, though I know that they differ.

X Q. 36. I show you complainant's exhibit for identification, "Hunyadi Janos Analyses," and ask you to look particularly at the analysis of Liebig. Will you please state whether this is the analysis used by you in the manufacture of the water manufactured by you and sold for a time under the name of Hunyadi Janos?

A. The analysis of Liebig exhibited in the paper you showed

me is different from the analysis that I have printed in my catalogue as being the one after which I have manufactured the water. It contains less magnesium sulphate and more sodium sulphate, the principal active ingredients, than contained in the original analysis of Liebig.

X Q. 37. Please compare the analysis of Liebig and the analysis of Fresenius, and I ask you to state whether they are alike, and if not, in what respects they differ?

Objected to as being incompetent, since the analyses themselves show what they contain.

195 A. The two analyses mentioned of Liebig and of Fresenius are greatly different from each other in the content of active ingredients, but it is not the fault of the chemist, because natural waters depend upon the rain that comes down, and one time they are strong and other times they are weak.

The answer of the witness is objected to from and after the word "but" as incompetent, not responsive, and volunteered.

X Q. 38. Please compare the analysis of Fresenius as contained in the exhibit with the analysis of Ludwig, and state whether they differ, and if so, in what respect?

Same objection as to the last question.

A. The two analyses are also different from one another in the principal ingredients. Perhaps from the cause that they were made at different times.

X Q. 39. Please compare the analysis of Fresenius with the analysis of Bunsen, and state whether these two analyses differ, and if so, in what particular?

Same objection.

A. The analysis of Bunsen seems to prove that the specimen of water that was given to him to analyze was remarkably stronger than the one that Dr. Fresenius received.

The answer of the witness is objected to as entirely volunteered and not responsive, and the witness is requested to answer the question.

(Witness continues:) In order to prove that my answer given just now was correct, I say that the analyses differ from each other in the exhibition of the quantity of sulphate of sodium and sulphate of magnesium which the Hunyadi Janos contains.

X Q. 40. Is it not a fact that none of these analyses are alike, and that they differ both in quantities and in ingredients?

A. They differ. They differ in every respect almost.

X Q. 41. Is Liebig regarded as an authority on matters of analyses?

A. Liebig has always been considered a high authority, even by the World's Fair.

196 X Q. 42. Are not Professors Fresenius, Bunsen and Ludwig also regarded as high authorities on analyses?

A. They are regarded as high authorities.

X Q. 43. Will you please state why you carbonated the water which you made for a time and sold under the name Hunyadi Janos?

A. Because it was necessary to obtain a thorough solution and mixture of the ingredients that are in the water, and to improve the taste.

X Q. 44. Without such a carbonization, could you not have produced a thorough solution and mixture of the ingredients?

A. Not precisely; the calcium that is contained in it requires a second equivalent of carbonic acid to remain in solution.

X Q. 45. Is that the only substance?

A. Yes. The calcium, silicic acid and aluminum also require the assistance of the carbonic acid to remain in solution.

X Q. 46. Was your water highly carbonated?

A. No; just as much as necessary.

X Q. 47. How much is necessary?

A. Well, about thirty pounds pressure of gas.

X Q. 48. Is the same pressure of carbonic acid gas found in the natural Hunyadi Janos?

A. No.

X Q. 49. In your opinion, does the addition of a high pressure of carbonic acid gas, or the addition of carbonic acid, in any manner change the equilibrium of the other chemical constituents of the water?

A. I think not.

X Q. 50. Do you know whether it does or not?

A. I am confident it does not; I know it does not.

X Q. 51. Have you any means of knowing exactly what the condition of the various chemical elements in a mineral water is while it is under a pressure of thirty pounds of carbonic acid gas?

A. We don't know what the condition is.

X Q. 52. Do you know, or is it known at all, exactly in what condition the various chemical elements are while they are in suspension in a natural mineral water?

A. It is not known.

X Q. 53. Is it known exactly in what manner the various ingredients combine while they are in suspension in a natural mineral water?

197 A. It is only surmised.

X Q. 54. Has carbonic acid gas any effect upon the stomach?

A. A delightful one. Carbonic acid is one of the best remedies for a weak and lacerated stomach.

X Q. 55. Then a mineral water which is charged with about thirty pounds of carbonic acid gas has an additional effect upon the stomach, which is not obtained from the use of a natural water which is not thus charged?

A. The carbonated water is more beneficial than the still water, which is not so charged.

X Q. 56. Then the effect on the stomach of an artificial water

charged with carbonic acid gas is different from the effect of a natural water which is not thus charged, is it not?

A. The artificial water is always more effective.

X Q. 57. If a physician has prescribed natural aperient water to a patient, would you furnish an artificial aperient on such a prescription?

A. No; I would tell him to go where he can get it.

X Q. 58. Have you personally ever analyzed Hunyadi Janos?

A. I remember I have. I have analyzed it—I will give you the date if you—I can take the date from the bitter water.

X Q. 59. Will you please state your best recollection as to when you analyzed it?

A. I have analyzed it; it must be in about '87 or '88. I did do it before I wrote that paper; that was read in San Francisco.

X Q. 60. About how much of the natural Hunyadi Janos did you analyze at that time?

A. I presume a bottle, as it appears in the market.

X Q. 61. Have you also, in the course of your business as a manufacturer of mineral water, made and sold a water under the name of Apollinaris?

A. Yes; still sell it.

Question and answer objected to as to matter not brought out in the direct, and irrelevant.

X Q. 62. If you knew that the word Apollinaris was a trademark, would you continue to manufacture and sell an artificial water under that name?

A. I would not.

198 X Q. 63. Is the name "Hunyadi" the name of any chemical compound?

A. Not that I know of.

X Q. 64. Are there not other natural aperient waters coming from Hungary which do not bear the name Hunyadi, such as Friedrichshall, Pullna, etc.?

A. There are lots of them, even one that comes from Kehlenfeld, Apenta.

X Q. 65. When did you first see a bottle of the natural Hunyadi Janos water?

A. It may have been fifty years ago; I don't know. Well, we can modify that; it may have been fifty years ago; sure at the time it was first introduced into St. Louis, for I kept it; I do not know when that was, but at fifty years ago I started a drug store, I kept all the prominent remedies and mineral waters I imported.

X Q. 66. Did you sell the natural Hunyadi Janos in your drug store?

A. Yes, whenever it was called for.

X Q. 67. When did you give up your drug store?

A. I sold out in '68.

Redirect examination:

R. D. Q. 68. Was the paper that you spoke of in cross-question 59 published?

A. Yes.

Recross-examination:

R. X Q. 69. Did you manufacture and sell the water which you sold under the name of Hunyadi Janos in the same quantities and to the same extent as the other mineral waters which you manufactured and sold?

A. I sold a great deal less of Hunyadi Janos than I did of my Relief or my Tenfold Carlsbad, which are both aperient.

R. X Q. 70. Then I presume that this water which you sold under the name of Hunyadi Janos was only sold in small quantities to local customers, that called particularly for that water?

A. Yes, sir.

199 Redirect examination:

R. D. Q. 71. Did you ever sell your water in Cincinnati?

A. Yes, sir.

R. D. Q. 72. When?

A. I would have to look up my accounts; otherwise I can't tell you. I still sell there. I have sold my Hunyadi to Park & Co., Cincinnati.

(Signed)

ENNO SANDER.

200 Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity. No. 5498.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAGNER,
Defendants.

COUNTY OF HAMILTON,

State of Ohio, ss:

I hereby certify that on the 13th, the 14th, the 15th and the 17th days of December, A. D. 1904, before me, Casper W. Miles, a Notary Public in and for the County of Hamilton and State of Ohio, at the office of Walter F. Murray, Wiggins Block, in the City of Cincinnati, County of Hamilton and State of Ohio, personally appeared, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon, the witnesses, Wilhelm Bodemann, Charles T. P. Fennel, Julius Greyer, Dr. Edward Walker, Dr. Benjamin F. Clark, and Dr. Otis Cameron, and Otto V. Schrenk, Esquire, appeared as counsel for complainant, and Walter F. Murray, Esquire, appeared as counsel for defendants, and the said witnesses, Wilhelm Bodemann, Charles T. P. Fennel, Julius Greyer, Dr. Edward Walker, Dr. Benjamin F. Clark and Dr. Otis Cameron, being by me first duly cautioned and sworn to testify the whole truth, deposed and said as appears from the said depositions hereto annexed.

And I further certify that the said depositions were then and there taken down upon the typewriter by Miss Agnes McCormack, sub-

scribed by the witnesses, and the same have been retained by me for the purpose of sealing up and directing the same to the Clerk of the Court, as required by the law.

And I further certify that I am not of counsel nor attorney for either of the parties, nor am I interested in the event of the cause.

And I further certify that the fee for taking the said depositions, namely, \$118.80, is just and reasonable.

In testimony whereof I have hereunto set my hand and official seal this — day of January, A. D. 1905.

C. W. MILES,

Notary Public, Hamilton County, Ohio.

Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity. No. 5498.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAGNER,
Defendants.

It is hereby stipulated by and between the solicitors for the respective parties to the above entitled suit that the facts as set out in the opinion of the Supreme Court of the United States in the suit of Emilie Saxlehner against the Eisner & Mendelson Company, which opinion is reported in Volume 179, U. S. Rep., page 19, *et seq.*, were truly and correctly stated therein for the purpose of this suit.

Dated New York, December 30, 1904.

(Signed)

BRIESEN & KNAUTH,

Solicitors for Complainant.

(Signed)

WALTER F. MURRAY,

Solicitor for Defendants.

Defendants' counsel gives notice that the testimony of defendants is closed.

(Signed)

WALTER F. MURRAY,

Solicitor for Defendants.

And thereupon there was issued out of the Clerk's Office of the Court aforesaid, our certain Writ of Subpoena in Chancery in this cause, directed to the Marshal of said District and against the said defendants, which said Subpoena is clothed in the words and figures following, to-wit:

Subpœna.

UNITED STATES OF AMERICA,

Southern District of Ohio, Western Division, ss:

The President of the United States of America to the Marshal of the Southern District of Ohio, Greeting:

You are hereby commanded to summon Edward Wagner, William Wagner and Sophia Wagner, citizens of and resident in the State of Ohio, if they be found in your District, to be and appear in the Circuit Court of the United States for the Western Division of the Southern District of Ohio, afore-said, at Cincinnati, on the first Monday in February next, to answer a certain Bill in Chancery, filed and exhibited in said court, against them by Emilie Saxlehner, and citizen of and resident in the Kingdom of Hungary. Hereof you are not to fail under penalty of the law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this twenty-third day of November, A. D. 1900, and in the 125th year of the Independence of the United States of America.

Attest:

B. R. COWEN, *Clerk.*

Memorandum.

The said defendants are required to enter their appearance in this suit in the Clerk's Office of said Court on or before the first Monday of Jan., 1901, otherwise the said bill may be taken *pro confesso*.

B. R. COWEN, *Clerk.*

Endorsed on cover: Marshal's Civil Docket No. 1498. United States Circuit Court, Southern District of Ohio, Western Division. No. 5498. Emilie Saxlehner, *vs.* Edward Wagner, *et al.* Subpœna in Chancery. Filed Nov. 26, 1900. Appearance day First Monday in January, 1901. Answer Day First Monday in February, 1901. Mortimer Matthews and Briessen & Knauth, Complainant's Solicitors. Samuel Bailey, Jr., acknowledges himself security for all costs for which the plaintiff may be liable in this suit.

And afterwards, to-wit: on the 24th day of November, A. D. 1900,

a Bond was filed in the Clerk's Office of said Court in this
204 cause which said Bond is clothed in the words and figures following, to-wit:

Cost Bond.

Circuit Court of the United States for the Southern District of Ohio,
Western Division, ss.

No. 5498.

EMELIE SAXLEHNER
vs.
EDWARD WAGNER ET AL.

Cost Bond.

I hereby acknowledge myself security for costs in this case.
SAMUEL BAILEY, JR. [SEAL.]

Taken and acknowledged before me this 24th day of November,
1900.

ROBERT C. GEORGI,
Deputy Clerk, U. S. Circuit Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, ss:

I, Samuel Bailey, Jr., a resident of said District, do hereby swear,
that after paying my just debts and liabilities, I am worth two thou-
sand dollars, in real estate within the jurisdiction of this Court, and
subject to execution, levy and sale.

SAMUEL BAILEY, JR.

Sworn to and subscribed before me this 24th day of November,
A. D., 1900.
[SEAL.]

ROBERT C. GEORGI,
Deputy Clerk, U. S. Circuit Court, S. D. O.

And afterwards, to-wit: on the 26th day of November, in the year
last aforesaid, came the Marshal of said District to whom the said
Subpoena was in form directed and returned the same into the
Clerk's Office of said Court with his proceedings endorsed thereon,
clothed in the words and figures following, to-wit:

Marshal's Return.

Received this writ on the 26th day of November, A. D., 1900, and
on the 25th day of November, A. D., 1900, I served the same by
handing a true copy thereof with the endorsement thereon to said
Edward Wagner, William Wagner and Sophia Wagner each per-
sonally.

VIVIAN J. FAGIN, *Marshal*,
By W. J. SANDERSON, *Deputy*.

Fees: Total \$7.74.

And afterwards, to-wit: on the 27th day of November, A. D., 1900, an Appearance was filed in the Clerk's Office of said Court in this cause which said Appearance is clothed in the words and figures following, to-wit:

Appearance.

205 United States Circuit Court, Southern District of Ohio, Western Division,

No. 5498,

EMELIE SAXLEHNER

vs.

EDWARD WAGNER ET AL.

To the Clerk of said Court:

Please enter our appearance as solicitor and of counsel on behalf of defendants.

MURRAY & MURRAY,

Solicitors for Defendants.

And afterwards, to-wit: on the 21st day of December, A. D., 1900, an Entry was made upon the Journal of said Court, in this Court which said Entry is clothed in the words and figures following, to-wit:

Entry, Journal 6, Page 113.

Motion for Preliminary Injunction Hearing.

Complainant having filed a duly acknowledged notice of a motion for preliminary injunction with affidavits attached thereto and the parties hereto by counsel having applied to the court to have the same set down for hearing, the court upon the representations and stipulations of counsel orders that said motion be heard as stated in said notice on Saturday, January 26th, 1901. That defendants have until January the fifth, 1901, to answer the affidavits of complainant now on file that complainant have until Saturday, January 19th, 1901, to file affidavits in rebuttal thereof.

And afterwards, to-wit: on the 14th day of January, A. D., 1901, an entry was made upon the Journal of said Court in this cause which said entry is clothed in the words and figures following, to-wit:

Entry, Journal 6, Page 126.

Leave to File Amended Bill.

Upon application of the complainant leave is granted to file an Amended Bill herein forthwith.

And afterwards, to-wit: on the 30th day of January, A. D., 1901, a Demurrer was filed in the Clerk's Office of said Court in this cause which said demurrer is clothed in the words and figures following:

Demurrer.

Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity. No. 5498.

EMELIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

206 The Joint and Several Demurrer of Edward Wagner, William Wagner, and Sophia Wagner, the Defendants Above Named, to the Bill of Complaint and Amended Bill of Complaint of the Complainant, Emilie Saxlehner.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters or things in the said complainant's bill of complaint and amended bill to be true in such manner and form as the same are therein set forth and alleged, demur thereto and for cause of demurrer show:

First. That said complainant has not by her said bill and amended bill made or stated any such cause as doth or ought to entitle her to any such discovery or relief as is hereby sought and prayed for from or against these defendants, in view of the common knowledge of people throughout the country of which the court can take judicial notice, and particularly the facts set forth in the affidavits brought to the attention of the court on the motion herein for a preliminary injunction, and also the law as determined by the courts of this country in trade-mark cases.

Second. And as a further and special cause of demurrer, neither the said bill nor the bill as amended sets out the character or description of the bottles or the labels or other matter which gives notice to the public of any pretended rights of complainant, nor does the bill of complaint make profert of the same.

Wherefore, and for divers other good reasons of demurrer appearing in the said bill and amended bill, these defendants respectively demur thereto and humbly demand the judgment of this court whether they or either of them shall be compelled to make any further or other answer to the said bill of complaint as amended, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

EDWARD WAGNER,
MURRAY & MURRAY,
Solicitors and Counsel for Deft.

I hereby certify that in my opinion the foregoing demurrer of Edward Wagner, William Wagner and Sophia Wagner, defendants, to the bill of complaint and amended bill of complaint of Emilie Saxlehner is well founded in law and proper to be filed in this cause.

GEO. J. MURRAY,

Counsel for Defendants.

STATE OF OHIO,

Hamilton County, ss.:

Edward Wagner, being duly sworn, upon oath deposes and says that he is one of the defendants named in the above entitled
207 cause, that he has read the foregoing demurrer to the bill and amended bill of complaint of Emilie Saxlehner, complainant in this suit, and knows the contents thereof; that said demurrer is not interposed for the purpose of delaying said suit or any proceeding therein.

EDWARD WAGNER.

Subscribed and sworn to before me this 30th day of January, 1901.

[SEAL.]

W. J. RIELLY,

Notary Public, Hamilton County, Ohio.

40 cents paid by Affiant.

Opinion.

And afterwards, to-wit: on the 14th day of December, A. D., 1901, an Opinion was filed in the Clerk's Office of said Court in this cause which said Opinion is clothed in the words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division,

No. 5498.

EMELIE SAXLEHNER, Complainant,

vs.
EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

The bill shows that the complainant owns certain wells or springs, in the City of Buda-Pesth, Hungary, the water of which possesses valuable medicinal properties, and that she sells this water, a bitter water, throughout the world, under the trade-mark or trade-name of "Hunyadi Janos," and she complains,

1. That the defendants are wrongfully selling an artificial bitter water, of their own manufacture, under the same name, to her injury.

2. That the defendants are, also, wrongfully and to her injury, selling this artificial bitter water under the name of "W. T. Wagner's Sons Carbonated Artificial Hunyadi, Conforming to Fresenius' Analysis of the Hunyadi Janos Springs."

And she prays that the defendants may be enjoined from selling this artificial bitter water under these names, and for an accounting, etc.

The cause is now submitted upon the motion of the complainant for a preliminary injunction and upon the general demurrer of the defendants to the bill.

1. In *Saxlehner vs. Eisner, Mendelson Company*, 179 U. S. 19, the Supreme Court found that the Hungarian Bitter Waters were largely known in this country as "Hunyadi Waters," and 208 that in a certain sense the word "Hunyadi" had become a generic name for them, and held that, the complainant here, had not an exclusive right to use that word as the trade mark or trade-name of the water coming from her wells, but her right to use it in combination with the suffix "Janos" was not denied and it clearly appears from the bill and the affidavit submitted with the motion, that she has a valid trade-mark or trade-name, in the words "Hunyadi Janos," as applied to the water coming from her wells and which distinguishes that water from all other bitter water, Hungarian or otherwise. The right of the complainant to use this trade-name is absolutely exclusive, and therefore its use by the defendants, as applied to their artificial bitter water, after notice to *dentist*, is wrongful and should be restrained, notwithstanding the use of the word "Artificial" in connection therewith.

2. The plaintiff complains of unfair competition by the defendants in the use of the word "Hunyadi" although, in the view of the Supreme Court in the *Eisner, Mendelson Company*, case, that word had become generic and indicative of the whole class of Hungarian Bitter Waters, yet, as an owner of Hungarian Springs producing such waters, she insists that she is entitled to protection against the use of the word, by the defendants, to palm off on the public their artificial bitter water, as one of the Hungarian Bitter Waters, and the question arises as to whether she has made a case in pleading calling for such protection.

The ground upon which courts of equity intervene to prevent unfair competition and infringement of trade-marks is the same, namely, for the protection of rival traders and the purchasing public, from the fraudulent practices of the wrong doer, who seeks to sell his goods, as the goods of another, because the goods of that other have a better reputation in the market. In cases of strict trade-mark fraud is presumed from the unauthorized use of the trade-mark, while in case of unfair competition the fraudulent intent or the actual misleading of the purchasing public must be shown by evidence, and the evidence must conform to the case made in pleading. Now if it be true that the defendants are selling their water under the name "W. T. Wagner's Sons Carbonated Artificial Hunyadi, Conforming to Fresenius' Analysis of the Hunyadi Janos Springs," is there, in this name, any representation or suggestion

that the water is that of the complainant, or that it is one of the Hungarian bitter waters, or is there a false statement contained therein calculated to mislead intending purchasers and induce them to buy defendants artificial water in the belief that it is the natural water coming from the springs of the complainant?

None whatever, on the contrary the statement shows that the water offered for sale is not the natural water from complainant's well, but an artificial water made in conformity with Fresenius' Analysis of the Hunyadi Janos Springs. The defendants have a right to make a water in conformity with the Fresenius' Analysis of the Hunyadi Janos Springs, and have a right to sell it provided they sell it as an artificial water, and do nothing to mislead the public into the belief that it is natural water or to confuse the identity of the two waters. If the public are put into a position to intelligently choose between the natural and the artificial water, no wrong will be done.

In the case of Pillsbury *vs.* Eagle, 86 F. R. 608, and the other cases covering the same point, cited by counsel for the complainant, either actual fraud was shown or the representations, practices and conduct of the defendant or defendants were such as to mislead the public and produce practically the same results as if actual fraud had been perpetrated.

The demurrer will be overruled and the defendants, pending the final hearing, will be enjoined from using the complainant's trademark "Hunyadi Janos."

And afterwards, to-wit: on the 24th day of February A. D. 1902, an Entry was made upon the Journal of said court, in this cause which said Entry is clothed in the words and figures following, to-wit:

Entry, Journal 6, Page 406.

Order Overruling Demurrer, Granting Perpetual Injunction, and Giving Leave to File Amended Bill.

The defendant's demurrer to the complainant's bill of complaint and amendment thereto heretofore filed coming on to be heard; and a motion having been made by complainant for a preliminary injunction and said motion having come on to be heard before me on the 2d day of February, 1901, which motion was decided on December 14, 1901, and a motion for a rehearing of said motion thereafter having been made and heard this day before me; now upon reading and filing the notice of motion, the bill of complaint and amendment thereto and the affidavits of Kalman Saxlehner, Mortimer Bartlett, Albin Trojan, Ernest E. Smith, James K. Crook and Carl R. Schultz, together with the exhibits therein referred to in support of said motion, and the affidavits of Julius Greyer, Charles T. P. Fennel and Dr. Enno Sander, together with the exhibits herein referred to in opposition to said motion and after hearing Antonio Knauth and

Frank F. Reed for the complainant and George J. Murray
210 for the defendants, and due consideration being had and said
motion for rehearing being denied it is;

Ordered that the defendant's demurrer to the bill of complaint be and the same is hereby overruled; that the complainant have leave to file an amended bill of complaint within twenty days from the entry of this order; and it is further ordered that until the final hearing or determination of this cause the said defendants, their servants, agents and workmen, and each of them be and they are hereby enjoined and restrained from putting up, parting with, selling or attempting to sell within the United States of America any water not coming from the wells of the complainant under the name "Hunyadi Janos" or "Artificial Hunyadi Janos," and from using the said names "Hunyadi Janos" or "Artificial Hunyadi Janos," or either of them, on their labels, bottles or advertising matter in any manner which may tend to deceive or mislead the public. And it is further ordered that a preliminary injunction issue out of and under seal of this court directed to said defendants Edward Wagner, William Wagner and Sophia Wagner and each of them enjoining and restraining the said defendants, their agents, servants and workmen and each of them as hereinbefore ordered. This injunction is not to prevent the defendants from using the appellation: W. T. Wagner's Sons Carbonated Artificial Hunyadi conforming to Fresenius' analysis of the Hunyadi Janos' springs or the use of the word "Hunyadi" in the manner as shown on defendant's exhibit catalogues and advertising matters presented on this motion.

To all of which defendants except.

And afterwards, to-wit: on the 27th day of February A. D. 1902, a *Præcipe* was filed in the Clerk's Office of said court in this cause which said *Præcipe* is clothed in the words and figures following, to-wit:

Southern District of Ohio, Western Division. United States Circuit Court.

No. 5498.

EMELIE SAXLEHNER

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER.

Præcipe.

To Benjamin R. Cowen, Clerk of said Court:

Please issue a preliminary injunction directed against the above named defendants in accordance with the order of the court made February 24, 1902.

BRIESON & KNAUTH AND
MORTIMER MATTHEWS.

Solicitors for Complainants.

And thereupon there was issued out of the clerk's office of the court aforesaid, our certain writ of preliminary injunction in this case, directed to the Marshal of said District and against the said defendants, which said Writ of Preliminary Injunction is clothed in the words and figures following, to-wit:

Preliminary Injunction.

UNITED STATES OF AMERICA,

Southern District of Ohio, Western Division:

The President of the United States of America to Vivian J. Fagin, Marshal of the Southern District of Ohio, Greeting:

Whereas, Emilie Saxlehner, resident of the Kingdom of Hungary and subject of the King of Hungary, has filed on the Chancery side of the Circuit Court of the United States for the Western Division of the Southern District of Ohio, a bill against Edward Wagner, William Wagner and Sophia Wagner, and has obtained an allowance for an injunction, as prayed for in said Bill. Now, therefore, we, having regard to the matters in said bill contained, do hereby command and strictly enjoin and restrain you or each of you the said Edward Wagner, William Wagner and Sophia Wagner, from putting up, parting with selling or attempting to sell within the United States of America any water not coming from the wells of the complainant under the name of "Hunyadi Janos" or "Artificial Hunyadi Janos" and from using the said names Hunyadi Janos" or Artificial "Hungarian Janos" or either of them, on their labels, bottles or advertising matter in any manner which may tend to deceive or mislead the public (This injunction is not to prevent the defendants from using the Appellation: W. T. Wagner's Sons Carbonated Artificial Hunyadi, conforming to Fresenius analysis of the Hungarian Janos springs or the use of the word "Hunyadi in the manner as shown on the defendant's Exhibit catalogue and advertising matter presented on this motion.)

Which commands and injunction you are respectively required to observe and obey, until our said Circuit Court shall make further order in the premises.

Hereof fail not, under the penalty of the law thence ensuing.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 27th day of February A. D. 1902, and in the 126 year of the Independence of the United States of America.

B. R. COWEN,

Clerk U. S. Circuit Court, Southern District of Ohio.

[SEAL.]

By ROBT C. GEORGE, *Deputy.*

And afterwards, to-wit: on the 28th day of February in the year last aforesaid, came the Marshal of said District to whom the said Injunction was form directed and returned the same into the clerk's office of said court with his proceedings endorsed thereon, clothed in the words and figures following, to-wit:

Marshal's Return.

Received this Writ on the 28th day of February A. D. 1902, and on February 28, 1902, I served a true copy of this writ with all the endorsements thereon personally on each of the following named persons Edward Wagner, William Wagner, Sophia Wagner all at Cincinnati, Ohio.

Fees total \$7.47.

B. J. FAGIN.

U. S. Marshal, Southern D. O.,

By W. J. SANDERSON, Deputy.

And thereupon on the 17th day of March A. D. 1902, there was issued out of the Clerk's office of said court, our certain Writ of Alias Preliminary Injunction, directed to the Marshal of said District and against the said Defendant, which said Injunction is clothed in the words and figures following, to-wit:

Alias Preliminary Injunction.

THE UNITED STATES OF AMERICA,

Southern District of Ohio, Western Division:

The President of the United States of America to Edward Wagner, William Wagner, and Sophia Wagner, their and each of their several agents, attorneys, and workmen. Greeting:

Whereas, Emile Saxlehner resident of the Kingdom of Hungary and subject of the King of Hungary, has filed on the Chancery side of the Circuit Court of the United States for the Western Division of the Southern District of Ohio, a bill against you, the said Edward Wagner, William Wagner and Sophia Wagner, and has obtained an allowance for an injunction, as prayed for in said Bill.

Now therefore, we, having regard to the matter in said Bill contained, do hereby command and strictly enjoin and restrain you and each of you the said Edward Wagner, William Wagner, and Sophia Wagner, and your servants agents, attorneys and workmen, and each and every of them from, putting up, parting with selling or attempting to sell within the United States of America, any water not coming from the wells, of the complainant under the name "Hunyadi Janos" or "Artificial Hunyadi Janos" and from using the said names "Hunyadi Janos" or "Artificial Hunyadi Janos" or either of them on your labels, bottles or advertising matter in any manner which may tend to deceive or mislead the public.

213 This injunction, however, is not to prevent you, the said defendants from issuing the appellation W. T. Wagner's Sons Carbonated Artificial Hunyadi conforming to Fresenius analysis of the Hunyadi Springs or the using of the word "Hunyadi" in the manner as shown on your the said defendants' exhibit catalogue and advertising matter presented upon the motion in pursuance of the granting of which this writ is issued.

Which commands and injunction you are respectively required to observe and obey, until our said Circuit Court shall make further order in the premises.

Hereof fail not, under the penalty of the law thence ensuing.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of March A. D. 1902, and in the 126th year of the Independence of the United States of America.

B. R. COWEN,

Clerk U. S. Circuit Court, Southern District of Ohio,

[SEAL.]

By ROBERT C. GEORGI, *Deputy.*

And afterwards, to-wit: on the 18th day of March in the year last aforesaid, came the Marshal of said District to the said Writ of Injunction was in form directed and returned the same into the clerk's office of said court with his proceedings endorsed thereon, clothed in the words and figures following, to-wit:

Marshal's Return.

CINCINNATI, OHIO, *March 18, 1902.*

Received this writ on the 18th day of March A. D. 1902, and on the 18th day of March A. D. 1902, I served the same by handing a true copy of this writ with all the endorsements thereon, personally to each of the following named persons, Edward Wagner, William Wagner, and Sophia Wagner, all at Cincinnati, Ohio.

VIVIAN J. FAGIN,

U. S. Marshal, S. D. O.,

By W. J. SANDERSON, *Deputy.*

Fees total \$7.74.

And afterwards to-wit: on the 31st day of March A. D. 1902, Exceptions to Amended Bill was filed in the Clerk's office of said court in this cause which said exceptions were clothed in the words and figures following, to-wit:

Exceptions to Amended Bill.

Circuit Court of the United States, Southern District of Ohio, Western Division.

In Equity. No. 5498.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER, Defendants.

Exceptions to Amended Bill of Complaint.

214 The amended Bill of complaint filed March 6, 1902, is excepted to for indefiniteness and uncertainty for the following reasons:

The original Bill of complaint in this cause was filed November 23, 1900, an amendment to this bill was filed January 14, 1901, which did not differ substantially from the original bill of complaint except in adding an amendment to the 10th clause, and in continuation thereof the allegation that the defendants were offering to the public artificial bitter water not coming from the Hunyadi Janos establishment, nor having any connection with it, under the name of "W. T. Wagner's Sons Carbonated Artificial Hunyadi, conforming to Fresenius's analysis of the Hunyadi Janos springs, etc."

The original bill of complaint did not allege or have attached to it a copy of any trade mark, or make profert of any trade mark upon which the bill of complaint was filed, but did have attached to it and offered with it certain exhibits showing the labels, advertising matter and other exhibits used by the defendants which were claimed to infringe upon something that the complainant believed herself entitled to. The amended bill of complaint apparently was intended to cover the alleged trade mark of Janos alone filed in 1887, as appears from the affidavit of Kalman Saxlehner which is attached to the bill of complaint and which had attached to it the certificate of registration for the word "Janos" and a copy of the trade mark issued by the Patent Office in 1887 and marked in the former case "Complainant's Exhibit Janos Registration," and this case came on to be heard before Judge Thompson on the affidavits of complainant and defendants and on demurrer of defendants to the bill of complaint, and a ruling was made December 14, 1901, by His Honor Judge Thompson.

It would appear that each party was under the impression that the decision was in his favor and complainant, through its counsel, January 24, 1902 notified defendants' counsel that His Honor Judge Thompson had agreed to a rehearing of the case of the motion for preliminary injunction on February 22d, and that the clerk had accordingly placed it upon the docket for that day. Counsel for defendants supposing from the notice that it was to be a rehearing prepared for the rehearing and at the appointed time both counsel for complainant were heard and argued the case very fully. After the argument the court stated that it did not desire to hear from

defendants' counsel and proceeded to deliver an oral decision, treating the matter as for leave to file a petition for rehearing, but defendants' counsel and, it is believed, complainant's counsel believed that a rehearing had actually been granted. At the close of His Honor Judge Thompson's remarks complainant's counsel asked for leave to file an amended bill of complaint, which was granted, the demurrer overruled and the motion for preliminary injunction sustained. Complainant drew up the entry in accordance with the court's ruling overruling the demurrer and granting the motion for preliminary injunction, but adding an exception as follows.

"This injunction is not to prevent the defendants from using the appellation: W. T. Wagner's Son's, "Carbonated Artificial Hunyadi, conforming to Fresenius' analysis of the Hunyadi Janos Springs, or the use of the word, 'Hunyadi' in the manner as shown in defend-

ants' exhibits, catalogues, and advertising matters presented on this motion."

The amended bill of complaint was filed March 6, 1902, it differs in no material allegations from the original and former amended bills. It is indefinite in not stating what trade marks are sued upon, whether the "Hunyadi Janos" mark, alleged to be invalid, of 1876, the "Hunyadi" trade mark, which was sued on in the case cited from the Supreme Court, of 1887, or the "Janos" trade mark which it was supposed was relied upon in the original and first amended bill of complaint.

There is not attached to this amended bill of complaint any exhibits of what is complained of as an infringement, if either one of its trade marks, or of any wrong that defendants have committed, or anything they have not been permitted to do by the exceptions set forth in the entry of February 22, 1902. The amended bill of complaint is therefore indefinite and uncertain and it is asked that it be made more definite and certain in order that they may answer truthfully any complaint that complainant may set up against them.

MURRAY & MURRAY,

Solicitors and Counsel for Defendants.

March 31, 1902.

MORTIMER MATTHEWS,

Per A. D.

And afterwards, to-wit: on the 23d day of April A. D. 1902, an Entry was made upon the Journal of said court in this cause, which said entry is clothed in the words and figures following, to-wit:

Entry, Journal 7, Page 385.

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Exceptions to Bill Overruled.

This cause having come on to be heard upon the defendants' Exceptions to the Bill of Complaint filed March 31, 1902, was submitted to the court which being fully advised in the premises upon the arguments of Counsel finds said exceptions not well taken and overrules the same, to all of which the defendants by their counsel except, and defendants are given ten days from the entry hereof within which to file their answer to said Amended Bill of Complaint.

And afterwards, to-wit: on the 2d day of May A. D. 1904, a Motion was filed in the Clerk's office of said court in this cause which said Motion is clothed in the words and figures following, to-wit:

Motion to Extend Time for Filing Answer.

Circuit Court of the United States, Southern District of Ohio,
Western Division.

In Equity. No. 5498.

EMILIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

Now come the defendants Edward Wagner, William Wagner and Sophia Wagner and move this honorable court that the time within which the defendants may file their answer be extended for a period of ten days.

MURRAY & MURRAY,
Counsel for Defendant.

And afterwards, to-wit: on the 3d day of March A. D. 1904, an Entry was made upon the Journal of said court in this cause which said Entry is clothed in the words and figures following, to-wit:

Entry, Journal 7, Page 392.

Order Extending Time to File Answer.

Motion having been made by the defendants to have the time for filing their answers extended, it is ordered that defendants have ten days from the filing of this entry, within which to file their answer.

And afterwards, to-wit: on the 19th day of May, A. D. 1904, a Replication was filed in the Clerk's Office of said Court in this cause, which said Replication is clothed in the words and figures following, to-wit:

Replication.

Circuit Court of the United States for the Southern District of Ohio,
Western Division.

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In Equity. No. 5498.

EMELIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

The Replication of Emelie Saxlehner, Complainant, to the Answer of Edward Wagner, William Wagner, and Sophia Wagner, Defendants.

The repliant saving and reserving unto herself now and at all times hereafter all manner of benefit and advantage of exception

which may be had or taken to the manifold insufficiencies of the said answer, for replication therunto, says, that she will aver, maintain, and prove her said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by the repliant.

Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, and not herein and hereby well and sufficiently confessed or avoided, traversed or denied, is true.

All of which matters and things the repliant is and will be ready to aver, maintain and prove as this Honorable Court shall direct and humbly prays as in and by her said bill she has already prayed.

BRIESON & KNAUTH,

Solicitors for Complainant.

And afterwards, to-wit: on the 21st day of November, A. D., 1905, a Certified Copy of Final Decree in *Saxlehner vs. Thackery*, was filed in the Clerk's Office of said Court in this cause which said Final Decree is clothed in the words and figures following, to-wit:

Certified Copy of Final Decree in Saxlehner vs. Thackery.

Circuit Court of the United States, Northern District of Illinois,
Northern Division.

MONDAY, November 30, 1903.

Present: Honorable Christian C. Kohlsatt, District Judge.

No. 25816.

EMELIE SAXLEHNER

vs.

WILLIAM T. THACKERY.

This cause having come on for final hearing upon the bill of complaint, the answer thereto of the defendant, the replication of the complainant, and the proofs, oral, documentary and written, taken and filed in said cause on behalf of the complainant and on behalf of the defendant; and a decree having been entered herein on or about the 19th day of August, 1902, and the said defendant, William T. Thackery, having sued out an appeal from said decree to the United States Circuit Court of Appeals for the Seventh Circuit, and the said United States Circuit Court of Appeals for the Seventh Circuit having affirmed said decree with costs and having remanded said cause to this court with instructions to enter a decree in accordance with said mandate.

Now therefore, after reading and filing the mandate of the said Circuit Court of Appeals for the Seventh Circuit, and upon consideration thereof, and on motion of Briesen & Knauth, Solicitors for the

complainant, and due deliberation had; it is hereby ordered, adjudged and decreed, that said decree of this court, entered August 19th, 1902, be and the same is affirmed, the provisions of said decree being in terms as follows:

"Ordered, adjudged and decreed, that the complainant Emilie Saxlehner is the proprietor of certain bitter-water springs in the Kingdom of Hungary, called "Hunyadi Janos" and has for many years exported to and sold in the United States of America the water bottled therefrom; that said water had been and is now commonly known therein, together with certain other natural bitter waters exported from Hungary, under the name of "Hunyadi" or "Hunyadi Water," which name in this country has become the common appellation of said waters; and that complainant's predecessor in business adopted many years ago a novel and peculiar bottle and label for said "Hunyadi Janos" water which has been continuously used by said complainant in the sale of said water in this country, to-wit: a characteristic and novel style of bottle the same being of a straight shape with a short neck, to the top of which was attached a metal capsule, and bearing a novel and peculiar label covering almost the whole body of the bottle the characteristic features of which label are a division of the same into three longitudinal panels, the color of the label being blue with a red or reddish center panel; and it is further ordered, adjudged and decreed, that the defendant William T. Thackery, heretofore and before the commencement of this suit, without license and allowance, and against the will of the complainant, in violation of the rights of the said complainant, did unlawfully, wrongfully and fraudulently put up for sale, sell and offer for sale, an artificial preparation manufactured by him in

Chicago in the State of Illinois, in bottles similar to those
219 used by the complainant, the same being of a straight shape with a short neck and having a capsule of tin foil thereon, and bearing labels of blue color divided into three longitudinal panels each panel bearing the name "Hunyadi Geyza," all contrived to create the belief that defendant's preparation was a genuine "Hunyadi" water; that by the name "Hunyadi Geyza," as well as by the use of said imitating bottles and labels, said defendant has unfairly and wrongfully competed and is so competing with said complainant in her business of selling "Hunyadi Janos" water; and it is further ordered, adjudged and decreed, that a perpetual injunction be issued out of and under the seal of this court, enjoining and restraining the defendants, W. T. Thackery, his agents, attorneys, servants and workmen and each and every of them, from the use of the word "Hunyadi" as a designation for manufactured mineral water; and further restraining and enjoining him and them from the use of the said word in any manner in connection with manufactured mineral water, without in every instance plainly designating such water as an artificial and manufactured product, and further enjoining the use by the defendant of the combination of bottle and label and name "Hunyadi Geyza" now used by him and above described and from selling or offering for sale any such bitter water in bottle and under labels imitating complainant's "Hunyadi

Janos" bottles and labels in general appearance so closely as to be calculated to deceive the public into the belief that the water sold thereunder comes from complainant's establishment, or is a genuine "Hunyadi Janos" water."

And it is further ordered, adjudged and decreed that the complainant do recover from the defendant William T. Thackery, the sum of — two hundred forty-two 91-100 dollars as her costs and disbursements in this court, as taxed by the clerk of this court, and that judgment for said sum be entered in the Clerk's Office of this Court, in favor of said Emelie Saxlehner, and against said William T. Thackery.

NORTHERN DISTRICT OF ILLINOIS.

Eastern Division, ss:

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the order entered of record in said court on the 30th day of November, A. D., 1903, in the case wherein Emelie Saxlehner is the complainant and William T. Thackeray is the defendant, as the same appears from the original record now remaining in my custody and control.

220 In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said District, this 6th day of November, A. D., 1905.

MARSHALL E. SAMPSELL, *Clerk.*

And afterwards, to-wit: on the 21st day of November, A. D. 1905, a Certified Copy of Opinion of Judge Kohlsatt was entered in the Clerk's Office of said Court in this cause which said Entry is clothed in the words and figures following, to-wit:

Certified Copy of Opinion of Judge Kohlsatt, in Saxlehner vs. Thackeray.

In the United States Circuit Court, Northern District of Illinois,
Northern Division.

No. 25816.

SAXLEHNER

vs.

THACKERAY.

KOHLSAT, *District Judge:*

This suit is brought by the proprietor of "Hunyadi Janos" one of the natural mineral waters exported from Hungary and commonly known as "Hunyadi" waters, against an American manufacturer of mineral water put upon the market as "Hunyadi Geyza." The evident purpose of the defendant is to palm off upon the public his manufactured water as a genuine "Hunyadi" water. Defendants'

contention is that the term "Hunyadi" has become public property and simply means a bitter cathartic water; and insists that under the decision of the U. S. Supreme Court in the Hunyadi causes, 179 U. S. 19*m*, the said term is a generic name for waters of this character, whether natural or artificial.

The shape of defendant's bottle and the general arrangement of the wrapper and inscriptions thereon, were evidently selected with a view to the sale of the water manufactured by defendant as natural Hunyadi water. Defendant inconspicuously places upon the bottom of the label the word "synthetic" to denote that the water is manufactured and not a natural product; but so far as conveying this idea to the ordinary purchaser is concerned he might as well have printed it in Greek.

Under the reasoning of *Flour Mills Co. v. Eagle*, 86 Fed. 608, complainant or any other proprietor of springs in Hungary from which are obtained these bitter waters, is entitled to an injunction against defendants prohibiting the use of the word "Hunyadi" in the manner the same is used by defendant. I am also of the
221 opinion that as against complainant, the defendant is guilty of unfair competition in the matter of shape of bottle used in connection with the general arrangement of colors and inscriptions upon his label.

The contention of defendant that complainant's water is a manufactured water because of the fact that it is the result of a mixture of the water from over 200 springs, the proportion from each being regulated so as to secure a product uniform in mineral ingredients, I do not consider sustainable.

A decree may be prepared enjoining defendant from the use of the word "Hunyadi" as a designation for manufactured mineral water, and also the use of the said word in any manner in connection with manufactured mineral water, without in each instance plainly designating such water as an artificial and manufactured product; and further enjoining the use by defendant of the combination of bottle and label and name "Hunyadi Gevza" now used by him shown in the record as complainant's exhibit "A."

No accounting will be awarded.

(Endorsed.) Filed Aug. 19, 1902. Marshall E. Sampsell, Clerk.

NORTHERN DISTRICT OF ILLINOIS,

Eastern Division, ss:

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete copy of the opinion filed in said court on the 19th day of August, A. D., 1902, in the cause wherein Emilie Saxlehner is the complainant and William T. Thackeray is the defendant, as the same appears from the original files now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said court, at my office in Chicago, in said District, this 6th day of November, A. D., 1905.

[SEAL.]

MARSHALL E. SAMPSELL, *Clerk*.

And afterwards, to-wit: on the 21st day of November, A. D., 1905, an entry was made upon the Journal of said court in this cause which said entry is clothed in the words and figures following, to-wit:

Entry, Journal 8, Page 185.

Cause Heard and Submitted.

And afterwards, to-wit: on the 8th day of November A. D. 1906, a Memorandum of Judge Thompson was filed in the Clerk's office of said court in this cause which said Memorandum is clothed in the words and figures following, to-wit:

Memorandum of Judge Thompson.

222 United States Circuit Court, Southern District of Ohio,
Western Division.

No. 5498.

EMELIE SAXLEHNER

vs.

EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAGNER.

Submitted on Final Hearing.

(1) Saxlehner had an exclusive right to use the trade name "Hunyadi Janos"—a right which was recognized by his competitors at Buda-Pesth and elsewhere.

(2) But has not such right to use the word "Hunyadi" without the suffix "Janos." That word has become generic and indicative of the whole class of Buda-Pesth bitter waters and became public property in Hungary more than twenty years ago, and under the provisions of our Treaty with the Austro-Hungarian Empire of June 1872, (17 Stat. 917) it also became public property here.

Saxlehner v. Eisner & Mendelson Company, 179, U. S., 35-36.

(3) The evidence fails to show the unfair competition charged in the bill. The advertisements, labels, price lists, etc., show that the water sold by the defendants was an artificial water. The public were not misled by false representations, nor by the use or imitation of the bottles, labels, etc., of the complainant, but were fully advised that the waters offered for sale by the defendants were artificial and not the natural waters of the complainant, and intending purchasers, therefore, were free to intelligently chose between the two.

There will be a decree in accordance with these findings.

And afterwards, to-wit: on the 21st day of November A. D. 1906, an Entry was made upon the Journal of said court in this cause, which said Entry is clothed in the words and figures following, to-wit:

Entry, Journal 8, Page 485.

Order Dismissing Bill of Complaint.

This cause having been brought to final hearing upon the pleadings and proofs at the October Term, 1905, of this court, and counsel of the respective parties having been heard, and a motion having been made by the complainant to expunge certain parts of the evidence submitted by defendants, and due deliberation having been had thereupon, upon consideration thereof, it is hereby ordered, adjudged and decreed that the bill of complaint herein be, and the same hereby is dismissed with costs to the defendants to be taxed; and that complainant's said motion be, and the same is hereby denied.

223 And afterwards, to-wit: on the 22d day of November A. D. 1906, an Entry was made upon the Journal of said Court in this cause which said entry is clothed in the words and figures following, to-wit:

Entry, Journal 8, Page 486.

Leave to Withdraw Exhibits From Files.

Upon application of the complainant, complainant is given leave to withdraw temporarily from the files certain of the complainant's exhibits upon giving receipt therefor to the Clerk.

And afterwards, to-wit: on the 31st day of December A. D. 1906, a Petition for Appeal was filed in the clerk's office of said court, which said petition is clothed in the words and figures following, to-wit:

Petition for Appeal.

United States Circuit Court, Southern District of Ohio, Western Division.

In Equity.

EMILIE SAXLEHNER, Complainant-Appellant,
against

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants-Respondents.

The above-named complainant Emilie Saxlehner, feeling herself aggrieved by the final decree heretofore made and entered by this

court in this cause on the 21st day of November, 1906, whereby it was ordered, adjudged and decreed that the Bill of Complaint herein be dismissed, and that the said defendants, Edward Wagner, William Wagner and Sophia Wagner have judgment against said complainant for costs, does hereby appeal from said final decree to the United States Circuit Court of Appeals for the Sixth Circuit, and prays that this, her appeal, may be allowed and that a citation may be directed to the above named defendants, Edward Wagner, William Wagner and Sophia Wagner, commanding them to appear before the United States Circuit Court of Appeals for the Sixth Circuit, and that a transcript of the record, proceedings, evidence and opinion in said case, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Sixth Circuit and that said final decree of the Circuit Court of the United States for the Southern District of Ohio, Western Division, herein, may be reversed and such decree made as to the said United States Circuit Court of Appeals for the Sixth Circuit may seem just.

Dated December 28, 1906.

EMILIE SAXLEHNER,
By BRIESEN & KNAUTH,

Solicitors.

Ordered, that the appeal may be allowed as prayed for, and that a citation issue, returnable the — day of —, 1907.

U. S. Circuit Judge.

And afterwards, to-wit: on the 31st day of December A. D. 1906, an assignment of errors was filed in the Clerk's office of said court in this cause which said assignment of errors was clothed in the words and figures following, to-wit:

Assignment of Errors.

United States Circuit Court, Southern District of Ohio, Western Division.

EMILIE SAXLEHNER, Complainant,

against

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants.

Assignments of Error.

The complainant makes the following assignment of error in the decree made in this cause by the Hon. Albert C. Thompson, Judge, on the 21st day of November, 1906:

I. The court erred in deciding that the complainant had not an exclusive right as against the defendants as manufacturers of artificial waters to the name "Hunyadi" as a trade mark.

II. That the court erred in deciding that the complainant had not as against the defendants as manufacturers of artificial mineral waters, the right to enjoin them from using the name "Hunyadi" as a name for an artificial product on principles of unfair competition.

III. That the court erred in holding that the evidence in the case failed to show the unfair competition charged in the bill of complaint, and in failing to find that the use of the name "Hunyadi" by the defendants was not accompanied by such statements as would make deception or confusion impossible.

IV. That the court erred in not holding that by the use of the name "Hunyadi Janos" on its bottles and labels, the defendants had infringed the trade mark rights of the complainant to the name "Hunyadi Janos."

V. That the court erred in denying complainant's motion submitted at final hearing to expunge from the record the several parts of the defendants' evidence recited in said motion, and every part thereof.

225 VI. That the court erred in dismissing complainant's bill of complaint.

VII. That the court erred in failing to grant to complainant a perpetual injunction enjoining the defendants from the use of the names "Hunyadi Janos" and "Hunyadi" and each of them as a name for the artificial product manufactured and sold by the defendants.

VIII. That the court erred in not granting to complainant any part of the relief prayed for in the bill of complaint.

EMILIE SAXLEHNER,
By BRIESEN & KNAUTH,
Solicitors.

ANTONIO KNAUTH,
Of Counsel.

And afterwards, to-wit: on the 31st day of December A. D. 1906, an Entry was made upon the Journal of said court in this cause, which said entry is clothed in the words and figures following, to-wit:

Entry, Journal 8, Page 504.

Order Allowing Appeal.

This day came the complainant and presented his Petition for Appeal herein and an Assignment of Errors accompanying the same, which petition upon consideration of the court is hereby allowed and the court allows an Appeal to the United States Circuit Court of Appeals for the Sixth Circuit upon the filing of an Appeal Bond in the sum of Two Hundred and Fifty (\$250.00) Dollars with security to be approved by the court.

And afterwards, to-wit: on the 31st day of December, A. D. 1906, an Appeal Bond was filed in the Clerk's office of said court in this cause which said bond is clothed in the words and figures following to-wit:

Appeal Bond.

National Surety Company.

Circuit Court of the United States of America for the Southern District of Ohio, on the Western Division.

EMILIE SAXLEHNER, Complainant-Appellant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER,
Defendants-Respondents.

Bond for Damages and Costs.

Know all men by these presents, that the National Surety Company, having an office and principal place of business at No. 346 Broadway, in the city of New York, county and state of New York, is held and firmly bound unto the above named Edward Wagner, William Wagner and Sophia Wagner, in the sum of two hundred and fifty (\$250.00) dollars, to be paid to the said Edward Wagner, William Wagner and Sophia Wagner for the payment of which well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents. Sealed with its seal, and dated the 26th day of December in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, the above named Emilie Saxlehner, has prosecuted an appeal to the United States Circuit Court of Appeals for the Sixth Circuit, to reverse the Decree rendered in the above entitled suit, by the judge of the Circuit Court of the United States for the Southern District of Ohio, Western Division.

Now, therefore the condition of this obligation is such, that if the above named Emilie Saxlehner shall prosecute her appeal to effect, and answer all damages and costs if she fail to make her appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered, and taken and acknowledged this 26th day of December, 1906, before me,

NATIONAL SURETY COMPANY,

[SEAL.]

By JOEL RATHBONE,

Res. Vice-President.

Attest:

JOHN HOLMES,

Res. Asst Secretary.

Copy of By-Law.

Be it remembered, that at a regular meeting of the Board of Directors of the National Surety Company, duly called and held on the Twentieth day of May, 1897, a quorum being present, the following By-Law was adopted:

"Article XIII. Sec. 1. All bonds, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, shall be signed by the President, the Vice-President, the Second Vice-President, a Resident Vice-President, or an attorney in fact, and, except when signed by an attorney in fact, shall have the seal of the Company affixed thereto, duly attested by the Secretary, Assistant Secretary or a Resident Assistant Secretary. The Vice-President, Second Vice-President and Resident Vice-Presidents shall each have authority to sign such instruments whether the President be absent or incapacitated or not; and the Assistant Secretary and Resident Assistant Secretary and Resident Assistant Secretaries shall each have authority to seal and attest such instruments, whether the Secretary be absent or incapacitated or not. All such instruments executed as herein provided shall be as binding upon the Company as if the same were signed by the President, duly sealed and attested by the Secretary."

227

[SEAL.]

CITY AND COUNTY OF NEW YORK, ss:

I, John Holmes, Resident Assistant Secretary of the National Surety Company, have compared the foregoing By-Law with the original thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original By-Law.

Given under my hand and the seal of the Company, at the City of New York, this 26th day of December, 1906.

[SEAL.]

JOHN HOLMES,
Res. Asst. Secretary.

CITY AND COUNTY OF NEW YORK, ss:

On this 26th day of December, 1906, before me personally appeared Joel Rathbone, Resident Vice-President of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the City of New York; that he is the Resident Vice-President of the National Surety Company; that he knows the corporate seal of said Company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the Board of Directors of said Company, and that he signed said instrument as Resident Vice-President of said Company by like authority; and that the liabilities of said Company do not exceed its assets, as ascertained in the manner provided in Section 3, Chapter 720 of New York Session Laws of 1893. And the said Joel Rathbone further said that he is acquainted with John

Holmes, and knows him to be the Resident Assistant Secretary of said Company; that the signature of the said John Holmes subscribed to the said instrument is in the genuine handwriting of the said John Holmes and was thereto subscribed by the like order of the said Board of Directors and in the presence of him, the said Joel Rathbone, Resident Vice-President.

[SEAL.]

PHILIP B. INGRAHAM,

Notary Public for the County of N. Y., No. 18.

Certificate filed in Kings, Westchester, Richmond & Queens Counties.

(Copy.) No. 5498. U. S. Circuit Court, Southern Dist. of Ohio, Western Division. Emilie Saxlehner, Complainant-Appellant, against, Edward Wagner, and others, Defendants-Respondents. Bond for Damages and Costs. Surety: National Surety Company. Filed Dec. 31, 1906. B. R. Cowen, Clerk. I approve of the within bond, and of the sufficiency of the surety. A. C. Thompson.

228 And afterwards, to-wit: on the 30th day of January, A. D., 1906, an Entry was made upon the Journal of said Court in this cause which said entry is clothed in the words and figures following, to-wit:

Entry, Journal 8, Page 522.

Entry Extending Time to File Transcript.

Upon application of the Clerk of this Court, and for good cause shown, the time for filing the Transcript of Record of the Proceedings of this Court in this cause in the Circuit Court of Appeals of the United States, Sixth Circuit, is hereby extended thirty (30) days from this date.

And afterwards, to-wit: on the 28th day of February, A. D., 1906, an Entry was made upon the Journal of said Court in this cause which said entry is clothed in the words and figures following, to-wit:

Entry, Journal 8, Page 541.

Entry Extending Time to File Transcript.

Upon application of the Clerk of this Court, and for good cause shown, the time for filing the Transcript of Record of the Proceedings of this Court, in the above entitled cause, in the United States Circuit Court of Appeals, for the Sixth Circuit, is hereby extended fifteen (15) days from this date.

And afterwards, to-wit, on the 14th day of March, A. D., 1907, an entry was made upon the Journal of said Court in this cause

which said Entry is clothed in the words and figures following to-wit:

Entry, Journal 8, Page 556.

Entry Extending Time to File Transcript.

Upon application of the Clerk of this Court, and for good cause shown, the time for filing the Transcript of Record of the proceedings of this Court, in the above entitled cause, in the United States Circuit Court of Appeals, for the Sixth Circuit, is hereby extended fifteen (15) days from this date.

And afterwards, to-wit: on the 28th day of March, A. D., 1907, a Stipulation was filed in the Clerk's Office of said Court in this case which said Stipulation is clothed in the words and figures following, to-wit:

Stipulation.

United States Circuit Court, Southern District of Ohio, Western Division.

EMELIE SAXLEHNER, Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER, SOPHIA WAGNER,
Defendants.

Stipulation.

229 It is hereby stipulated that this record contains all these exhibits or portions of exhibits which can be printed and are material to the determination of this case; the printing of the other parts of said exhibits being waived.

Dated New York, Jan. 25th, 1907.

BRIESEN & KNAUTH,

Solicitors for Complainant.

WALTER MURRAY,

Solicitors for Defendants.

ANTONIO KNAUTH,

Of Counsel.

And afterwards, to-wit: on the 29th day of March, A. D., 1907, an Entry was made upon the Journal of said Court in this cause which said Entry is clothed in the words and figures following, to-wit:

Entry, Journal 8, Page 570.

Entry Extending Time to File Transcript.

Upon application of the Clerk of this Court, and for good cause shown, the time for filing the Transcript of Record of the proceedings of this Court, in the above entitled cause, in the United States Circuit Court of Appeals, for the Sixth Circuit, is hereby extended fifteen (15) days from this date.

THE UNITED STATES OF AMERICA,

Southern District of Ohio, Western Division, ss:

I, Benjamin R. Cowen, Clerk of the Circuit Court of the United States, within and for the District and Division aforesaid, do hereby certify that the foregoing is a true and complete Transcript of the proceedings had by and before said Court in the above entitled cause as the same appears of record and on file in the Clerk's Office of said Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Cincinnati, Ohio, this 12th day of April, A. D. 1907.

[SEAL.]

B. R. COWEN, *Clerk,*
By C. P. WHITE, JR.,
Deputy Clerk.

By the Hon. Albert C. Thompson, U. S. District Judge sitting and holding U. S. Circuit Court in and for the Southern District of Ohio, Western Division, Within the Sixth Circuit.

To Edward Wagner, William Wagner and Sophia Wagner:

Whereas, Emelie Saxlehner has lately appealed to the United States Circuit Court of Appeals for the Sixth Circuit, from the decree entered in the Circuit Court of the United States for the Southern District of Ohio, Western Division on the 21st day of 230 November, 1906, made in favor of said Edward Wagner, William Wagner and Sophia Wagner, and has filed the security as required by law, you are hereby cited to appear before the said Circuit Court of Appeals for the Sixth Circuit, at the City of Cincinnati, State of Ohio, on the 30th day of January, 1907, to do in the matter of said appeal what may remain to justice to be done in the premises.

Given under my hand at the City of Cincinnati, State of Ohio, in the Southern District of Ohio, Western Division, in the Sixth Circuit, on the 31st day of December, in the year of our Lord, one thousand nine hundred and six.

A. C. THOMPSON,
*Judge of United States District Court, for Southern
District of Ohio, sitting and holding United States
Circuit Court.*

Marshal's Civil Docket No. 3953. No. 5498. United States Circuit Court, Southern District of Ohio, Western Division. Emelie Saxlehner, Complainant-Appellant, *vs.* Edward Wagner, William Wagner and Sophia Wagner, Defendants-Respondents. Citation, Briesen & Knauth, Solicitors for Complainant-Appellant, 49 Wall Street, Borough of Manhattan, New York. Filed Jan. 4, 1907. B. R. Cowen, Clerk. Marshal's fees on Deposit.

CINCINNATI, OHIO, *January 4, 1907.*

Received this writ at Cincinnati, Ohio, on January 4, 1907, and on the same day served same by handing a true copy of this writ, with the endorsement thereon, to Walter F. Murray, attorney for the within named Edward Wagner, William Wagner and Sophia Wagner, who accepted service of same. Service made at Cincinnati, Ohio.

EUGENE L. LEWIS,

U. S. Marshal, S. D. O.,

By E. E. McGUIRE, *Deputy.*

Fees.

1 copy	\$.30
1 mile06
1 service	2.00
Total	<hr/> \$2.36

United States Circuit Court

SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION.

—RECORD—

EMILIE SAXLEHNER,

Complainant,

vs.

EDWARD WAGNER, WILLIAM WAGNER,

SOPHIA WAGNER,

Defendants.

It is hereby stipulated that this record contains all those exhibits or portions of exhibits which can be printed and are material to the determination of this case; the printing of the other parts of said exhibits being waived.

BRIESEN & KNAUTH,

Solicitors for Complainant.

ANTONIO KNAUTH,
Of Counsel.

WALTER F. MURRAY,

Solicitor for Defendants.

Dated, New York, January 25th, 1907.

[Defendants' Exhibit "Lajos Strip Label"].

Natural **HUNYADY LAJOS** Bitterwa

[Defendants' Exhibit "P. Scherer Company Price List"].

11 Barclay St., **P. SCHERER COMPANY**, New York

Natural Mineral Waters, Salts, Pastilles, Etc.,

IMPORTED FROM THE SPRINGS IN EUROPE.

TRADE PRICES:

NEW YORK, SEPTEMBER 10, 1886.

NAME OF WATER OR SPRING.	PROPERTIES.	ORIGINAL PACKAGES				PRICE DOZ. OZ.
		Con- tain- ing Bot- tles	Price \$ c.	Con- tain- ing Bot- tles	Price \$ c.	
AACHEN (Aix-la Chapelle, Prussia)	Sulphurous.	50	11 00			2 90
• • • • •	• • • • •	•	•	•	•	•
• • • • •	• • • • •	•	•	•	•	•
HUNYADI MATYAS (Hungary)	Saline, Aperient.	25	1 50			2 40
• • • • •	• • • • •	•	•	•	•	•
• • • • •	• • • • •	•	•	•	•	•
OFNER HUNYADI LASZLO	Saline, Aperient.	50	7 00			1 80
• • • • •	• • • • •	•	•	•	•	•
• • • • •	• • • • •	•	•	•	•	•

[Defendants' Exhibit "Clipping from Cincinnati Lancet-Clinic No. 1"].

Torpidity of the Liver—

For patients with torpid livers or sluggish action of the intestines, a wineglassful of Hunyadi Janos, taken an hour before breakfast, acts like a charm, freeing them from the depression and discomfort from which they suffer.

Hunyadi Janos

The Best Natural Aperient Water.

ANDREAS SAXLEHNER, Budapest, Hungary.

New York Office, 130 FULTON STREET.

[Defendants' Exhibit "Clipping from Cincinnati Lancet-Clinic No. 2"].

URINARY DISEASES

The very best results have followed the use of Hunyadi Janos in visceral diseases and affections of the urinary tract in which saline aperients are indicated.

Hunyadi Janos

THE BEST NATURAL
APERIENT WATER.

ANDREAS SAXLEHNER, Budapest, Hungary.

New York Office, 130 Fulton St.

[Defendants' Exhibit "Clipping from Cincinnati Lancet-Clinic No. 3 "].

Urinary Diseases.

The very best results have followed the use of **Hunyadi Janos** in visceral diseases and affections of the urinary tract in which saline aperients are indicated.

Hunyadi Janos

The Best Natural Aperient Water.

ANDREAS SAXLEHNER, Budapest, Hungary.

New York Office, 130 FULTON STREET.

[Defendants' Exhibit "Clipping from Cincinnati Lancet-Clinic No. 4 "].

In Pregnancy—

Hunyadi Janos is especially indicated and efficacious in the treatment of pregnant women, preventing hemorrhoids and keeping the system before and after confinement in perfect condition.

Hunyadi Janos

The Best Natural Aperient Water.

ANDREAS SAXLEHNER, Budapest, Hungary.

New York Office, 130 FULTON STREET.

[Defendants' Exhibit "Complainant's Card No. 1 "].

Hunyadi Janos

SAFEST NATURAL APERIENT WATER

Professor PICOT, of Bordeaux,

Professor of Clinical Medicine at the University

HUNYADI JANOS is indisputably the best of the saline aperients and laxatives; it is admirably tolerated by the stomach, it acts without giving rise to colic or intestinal irritation, and it therefore fully deserves its universal popularity."

WITH THE COMPLIMENTS OF THE PROPRIETOR:

ANDREAS SAXLEHNER, BUDAPEST.

BY SPECIAL APPOINTMENT TO

H. M. THE EMPEROR OF AUSTRIA AND KING OF HUNGARY.

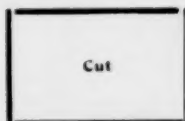
Cut of Bottle.

[Defendants' Exhibit "Complainant's Catalogue No. 1"].

ANDREAS SAXLEHNER, BUDAI.

THE WORLD'S BEST AND SAFEST NATURAL APERIENT WATER.

HUNYADI JANOS BUDAI KESERUVIZ



HUNYADI JANOS NATURAL Mineral Water

Proprietor :

Andreas Saxlehner, Budapest.

Every bottle bears a label of this character, has its cork branded "ANDREAS SAXLEHNER, BUDAPEST," and is closed with a metal capsule, stamped with the bust of the Hungarian hero HUNYADI JANOS, and the words "HUNYADI JANOS BUDAI KESERUVIZ."

Any person found selling other waters as and for this water, or under a label, cork-brand or capsule, resembling those used for this natural mineral water, so as to be calculated to deceive, will be prosecuted.

BUDAPEST, Hungary. *Andreas Saxlehner.*

Highly recommended by the first medical authorities of the globe.

[Defendants' Exhibit "Complainant's Sign"].

CUT OF BOTTLE.

IT'S EASY TO CURE

CONSTIPATION

DRINK ON RISING HALF A GLASS

Hunyadi Janos,

NATURAL LAXATIVE WATER.

RELIEF IS PLEASANT AND PROMPT.

INSIST ON

Hunyadi Janos.

CUT OF BOTTLE.

[Defendants' Exhibit "Sander Catalogue of 1886"].

DR. ENNO SANDER'S

MINERAL

SPRING WATERS

AND THEIR

CHEMICAL COMPOSITIONS.

ST. LOUIS.
129 South Eleventh Street.
1886.

Introduction.

The generous reception which the publication of my little pamphlet has received at its first appearance a year ago, from friendly physicians and other interested persons, has encouraged me to republish it this year in a slightly enlarged edition. While the first edition contained only a list of my mineral waters and the chemical composition of their solid ingredients, the present one includes the analyses of such American mineral waters as are not manufactured, but regularly used in this city, and with this addition the pamphlet may be accepted as a Physicians' Book of Reference, as far as the composition of the most popular mineral waters is concerned.

For the sake of simplicity and uniformity I have calculated all the solid substances as *anhydrous*, the carbonic salts as carbonates, and, according to present usage, the relative weights of these substances determined in *grains* contained in 16 fluid ounces of water. Thus it will be easy for physicians to find and prescribe for the requisite doses.

In the manufacture of these waters I have made the following distinction: the so-called "*Tablewaters*," mainly used as beverages, like Apollinaris, Carbonic, Selters, &c., are prepared from purified hydrant water, while the strictly medicinal waters, used for such purposes only, are invariably compounded with pure distilled water. In all cases pure chemicals are employed, the purity of which is ascertained by chemical tests; many of these chemicals and all their standard solutions are made in my own laboratory and *guaranteed* to be pure. The solid contents of the purified hydrant water, about 14 grains in a gallon, which will be found specified on the page exhibiting the manner of preparing the two different kinds of carbonic water, have been recognized in the calculation of the formulas for the waters prepared with it. (See p. 23.)

It need not be mentioned, perhaps, that the greatest care is exercised in all branches of the manufacture, whether it be in the purification of the water or of the carbonic acid gas or the compounding of the mineral waters themselves, which are either copies of
240 natural springs or originals after official or private formulas.

As regards the former, I have selected always the most reliable analysis of a spring, and when a change has occurred in its composition (a case of not unfrequent occurrence) I have accordingly reconstructed the formula. The most remarkable change that has taken place of late has been noticed in the *Friedrichshaller Bitterwater*, which, according to a circular recently published by the management of the Spring contains at present, after the analysis of a sample taken from the spring by Prof. Dr. Oscar Liebreich, 613.96 parts of solid substances in 10000 parts, while the same analyst found but 359.38 in bottles taken from a depot at Berlin, and Liebig only 252.94 parts in the same quantity of water in 1847. To invite comparison, I shall give further on both analyses and print also the formulas of other bitterwaters, among which I beg leave to call attention to the *Kissingen Bitterwater*, which is almost identically constituted like *Friedrichshall* as analyzed by J. V. Liebig in 1847. The two published analyses of Friedrichshall are by Liebreich, but it must be remembered that they are calculated for 16 ounces, or 7680 grains, and not for 10000 parts as above. All these *Bitterwaters*, *Hungari*

Janus included, when charged with an excess of Carbonic Acid, are deprived almost entirely of their disagreeable, nauseating taste, while they do not lose any of their other qualities; to the contrary they gain by becoming more digestible, hence preferable medicinally to the natural waters.

In regard to Saratoga water, which I manufacture only to order, I have assumed the standpoint of Carl H. Schultz, the eminent mineral water manufacturer of New York, who argues that "all the Saratoga waters have a common origin, and consequently do not differ in character, but merely in concentration;" and to provide the medical profession with a "reliable Saratoga water," he has prepared the "Artificial Saratoga Water," which contains, in exact average proportion, each mineral ingredient of 15 of the principal Saratoga springs as determined by Prof. Chandler, and is of a strength which lies between Congress and Hathorn, being four per cent. stronger than Congress.

In order to facilitate an intelligent comparison I have added a table setting forth the compositions of the 15 different springs in grains to the gallon of water as given by Prof. Chandler, and offer to manufacture to order waters of any one of the springs, if it should be so desired.

241 While it is cheerfully granted that the use of mineral waters at the springs is of the greatest advantage and most unquestionable success to sufferers, experience and chemical analysis have both demonstrated that these waters undergo a great change in their ingredients when drawn in the usual manner into barrels and bottles for transportation. The unavoidable admixture of atmospheric air and its destructive influence upon the sensitive protoxides and the organic substances, which never fail to be present in spring waters, produce changes which, especially in the presence of ferrous and manganous salts, become manifest even to the eye and taste, and under all circumstances to chemical reagents.

A close examination of bottled mineral waters, especially American, whether charged with carbonic acid gas or not, will prove this assertion, and whoever has examined carefully the remnants in a barrel of mineral water will acknowledge the correctness of this observation. Why is it that waters, thus deprived of their medicinal ingredients, are still offered and recommended to the public, even by responsible parties? All the Waukesha waters, whether bottled and charged with carbonic acid gas, or in barrels, exhibit this sediment, which becomes even manifest in their Ginger Ale, that shows invariably a cloudy, if not muddy appearance. In Europe they allow the iron to be oxidized and precipitated before they charge and bottle the filtered or settled water, but at Sheboygan they prefer to use the water from a well in the factory, charge it with carbonic acid obtained from marble dust and sulphuric acid, and infer a credulous public that they have extracted the solid ingredient from the medicinal water of their artesian well by chemical process, and impudently assert on their label: "this water is bottled at the springs, and is warranted pure and free from all injurious substances such as are found in *unmanufactured artificial waters*."

My method of manufacturing and bottling, which is the only secure and reliable one, prevents the contact of air with the finished water, and the use of pure *distilled water* precludes the presence of

organic substances; hence a decomposition of the ingredients is impossible.

It can now be justly claimed that *mineral waters*, when manufactured on scientific principles, are not liable either to changes from the fluctuations in their relative quantities of solid substances, 242 caused in natural springs mainly by meteorological influences in different seasons, or to those produced by the action of atmospheric air upon their ingredients, and should therefore be preferred by the medical profession and the public in general in all cases where it is impossible to enjoy the benefit of the natural water at the spring itself.

But care must be taken to employ waters, *only*, that are manufactured by responsible persons instructed and well versed in chemistry. In this connection I beg leave to recommend the use of my mineral waters, whose superior quality and beneficial effects, when properly administered, have been testified to by over two hundred of the most prominent physicians and professors of colleges in this city with their personal signatures, and I do not hesitate, therefore, to request the universal patronage of the medical profession.

Among the waters compounded from private formulas I must call your attention to my *Lithia-Potash Water of Garrod Spa* and to the *Pyrophosphorous Iron Water*. The former is the result of a careful study of all amenable works on the subject, and has been compounded on the principle that the greater solubility of the Lithium and Potash Urates should recommend the internal employment of their carbonic salts, in order to prevent in the human system the formation, or promote and accomplish the decomposition of the insoluble Sodium Urate, which constitutes the deposit found in the joints and other parts of gouty subjects.

The alkaline urates form acid salts in the human body, which are of different solubility. The sodium urate dissolves in about twelve hundred parts of water, while the potassium urate is more soluble, but lithium urate is the most soluble, and dissolves in about sixty parts of water (Dictionary of Solubilities, by Frank H. Storer, p. 701 and ff.). On account of their diuretic properties and their greater facility to dissolve in water, the salts of potassium and not of sodium ought to be employed in case of deficient secretions from the kidneys, but lithium carbonate, which was first "employed therapeutically" (Treatise on gout and Rheumatic gout, p. 366) by Dr. A. B. Garrod in 1858, has proved a great boon for correcting the inefficient action of the kidneys, and has been especially beneficial in the treatment of *Gout*. "The use of *Lithic salts* continued for seven

years not only prevented the formation of calculi, but likewise the recurrence of any gouty attack" (*Ibid.*, p. 370).

243 Roberts Bartholow in his "Materia Medica and Therapeutics" confirms this opinion and expresses himself thus: "There is little doubt that the *continuous use of alkaline waters* for a long time will cause the solution of *Uric Acid Renal Calculi*. For this purpose these alkaline waters rich in *Potassa* are preferable."

It will be observed from the formula published on page 32, that only such alkalies are used in the composition of the Garrod Spa as are not dissolved above and form soluble salts with uric acid, and it is presumed that, if already existing depositions of urate of soda should not be dissolved by its use, their further formation might be pre-

vented at least, and the uric acid eliminated from the system in the form of the soluble lithia and potash salts. The water has an agreeable taste, and by the addition of a tablespoonful of lemon juice to a tumblerful of the water may easily be changed into a light and pleasant aperient.

There is no natural spring in the United States which contains within one-sixth as much Lithium Carbonate as my *Lithia Potash Water*. The "Bulletin of the U. S. Geological Survey," recently published, mentions the "Washington Lithia well" with 1.216 grs. and the "Artesian Lithia Spring," with .608 grs. Lithium Carbonate in 16 oz. water. Both are situated in Ballston Spa Springs, Saratoga County, New York. Almost all the springs at Saratoga contain more or less Lithium, the average of 15 springs being .424 grains in 16 oz. The Buffalo Lithia Spring No. 2 of Virginia has .155 grs. in 16 oz. of water and is the weakest, but it also contains Potassium Carbonate. Its analysis will be found on p. 32 where it may be compared to that of my Garrod Spa, which contains in one pint more Lithium than will be found in 1 doz. $\frac{1}{2}$ gal. bottles of Buffalo Lithia water, and nearly 4 times as much Potassium. My Lithia-Potash water is impregnated with about 3 volumes of Carbonic Acid Gas, not so much for improving its taste, the water itself is very palatable but for the medicinal value of the gas in connection with the efficiency of the water for its peculiar purposes.

The free use of carbon dioxide is greatly recommended by the authorities, on account of its solvent qualities and tonic influence upon the intestines, but if its employment should be contraindicated, it will not harm the efficiency of the water to expel from it the free carbon dioxide, for lithium carbonate is soluble in one hundred parts of water, or at least four grains in one ounce. Even the magnesium will remain in solution.

The *Pyrophosphorous Iron Water* was introduced into the medical practice by Dr. Nega, as early as 1852, and has been highly appreciated ever since. It is prepared by the double decomposition of Perchloride of Iron and Pyrophosphate of Sodium and the dissolving of the resulting Iron salt in another equivalent of the Pyrophosphate of Sodium which, in itself a beneficial agent upon the nervous system, has the happy faculty of concealing entirely the astringent and inky taste that renders other preparations of iron so disagreeable to our palates. It was readily adopted by the medical profession many years ago, and has been quite popular in all parts of Europe. It contains the equivalent of two grains of metallic iron in sixteen fluid ounces, and one and one-third more than the original formula of Dr. Nega, which physicians will please notice in prescribing. The Chloride of Sodium, or common salt, which, according to the experiments of Woronichin of Petersburg, promotes the assimilation of the iron, would have been added especially, if it were not obtained naturally during the process of manufacturing.

This "*effective chalybeate without taste and odor*" is principally used in conditions of general debility or in the treatment of chlorosis and anaemia, and particularly of certain diseases of children. A renowned German physician, especially successful in this practice speaks of it thus in the Year book of Therapeutics of diseases of children; Vol. 8, 1875: "Among all the natural chalybeate water there is in my opinion, none that is so essentially adapted for use

in the practice of diseases of children as the Pyrophosphonous Iron Water. It is easily taken by the children, quickly assimilated, acts neither astringently nor costively, does not irritate, and never changes its composition."

A most valuable adjunct in this preparation is the large amount of carbonic acid gas, which promotes the digestion of the iron, as has been ascertained from the use of all emphyseate mineral waters that carry an abundance of free carbonic acid. However, if the conditions of the patient should require a smaller amount of gas, it can be allowed to escape, without fear of a decomposition of the other contents or of a precipitate.

245 While the advantages of this Iron Water are due principally to its felicitous composition, it must be remembered that the efficiency of a medicine depends chiefly upon a careful selection of its ingredients and their skillful compounding, and great caution should therefore be exercised in the selection and purchase of such medicinal waters.

One very simple, but very efficient compound among my mineral waters, the "Carbonic," has excellent claims for being mentioned here. It is very popular on account of its tonifying influence upon a weak stomach and the intestines; it cures nausea and is the most effective anæsthetic in chronic dispositions to vomit; "it stimulates the gustatory nerves, the flow of saliva and the secretion of gastric juice, and it is easily borne by persons with whom common water produces heaviness in the stomach and dyspepsia," but it contains simply pure carbonic acid gas absorbed in purified Mississippi water as was mentioned above. For peculiarly delicate cases it is manufactured also with distilled water, and physicians will please clearly designate on their prescriptions which kind they want (see page 231).

The medicinal virtues of *thermal springs* depend to a great extent upon the high temperature of their waters, and for this very reason one might think that conscientious physicians would never permit the bottling and transportation of thermal waters. But it is done nevertheless; the patients are advised to heat the water before drinking it, and some ingenious proprietors of hot springs have even discovered to their great financial advantage that the water remains just as efficient, at or away from the spring, hot or cold. The thoughtful manufacturer of mineral waters prepares the water with double its mineral strength, and by advising to mix equal quantities of the stronger medicated and hot water, he enables the patient to enjoy the closest imitation of the natural water both in mineral strength and temperature. Of these thermal waters "*Carlsbad*" alone, on account of its great popularity, is kept constantly on hand in double mineral strength, which with complete directions for its use is designated on the label; but *Ems* and *Vichy* or any other thermal water will be furnished in the same manner to order. These waters are also manufactured of any mineral strength that may be desired, in order to enable physicians to use them in cases where a more powerful action than due to the simple water is wanted.

246 and it is believed that it will induce physicians to abstain from the further use of the so-called natural salts, which in the case of Carlsbad "has been found upon analysis to be nothing but purified Glauber's Salt," and in Vichy only Bicarbonate of Soda.

In artificial waters, as in nature, the solution of mineral substances is obtained by the aid of Carbonic acid, which in our case is added under pressure in excess, first to prevent a decomposition of the minerals, but also for correcting the taste and increasing the digestibility of the water. Where the use of gas is contra-indicated it may easily be disposed of by opening the bottle, or when syphons are used which require a strong pressure to force out the water, by allowing it to stand in the glass for a short time before drinking it, and the result will be the escape of the gas except one volume which is the largest quantity water at ordinary temperature is able to retain. Hence it follows that all highly charged waters are artificially impregnated.

My *mineral waters* are extensively used in this city, and are shipped to all parts of the country in quarts, pints, half-pints (if demanded) and jugs. The *Tablewaters*, like *Apollinaris*, *Carbonic*, *Selters* and *Sinzighbrunn*, my "*Natural Mineral Water*," are put up in casks of 60 quarts, and when ordered in jugs but 50, or pints 100 bottles each, and are sold at a very reasonable price. Their quality will be found equal, if not superior, to all other waters whether foreign or domestic.

In St. Louis they have been used (principally in syphons) during these years by a large number of families, and the most prominent of its physicians have prescribed them for their patients and testified to their reliability by their signatures, which must be taken as a strong proof of their excellence.

The *Aromatic Ginger Ale*, which enjoys a great popularity wherever it is sold, "combines in itself all the efficacious and wholesome qualities of the finest tonics without the presence of any Alcoholic substances, and it is absolutely non-intoxicating, but possesses remarkable virtues as a medicinal agent." It has become of late a highly valued medicinal agent, and is frequently prescribed for. I manufacture it from the resinous extract, which I prepare myself from the ginger root, and, with the addition of citric acid, sugar

and carbonic water, it forms a delicious and wholesome com-
247 pound, that physicians may safely prescribe for their patients.

Equally good as beverage or remedy, it must be recommended to physicians and the public in general, and is shipped to all parts in casks of 5 dozen quarts or 10 dozen pints each.

The foregoing remarks are respectfully recommended to the attention of the consumers of mineral waters.

ENNO SANDER.

129 South Eleventh Street.

* * * * *

Ofen, Bitterwater (Hungadi Janos).

		In 16 ounces.
Sodium Carbonate	2	6980 grains.
Magnesium Sulphate	161	7904 "
Potassium "	7	428 "
Sodium "	109	4671 "
" Chloride	5	0732 "
Calcium "	6	1200 "
Alumina	1	200 "
Silica	1	0900 "

986 1018 grains

[Defendants' Exhibit "Sander Price List"].

PRICE LIST OF
Dr. ENNO SANDER'S MINERAL SPRING WATERS,
125-129 S. Eleventh Street.
ST. LOUIS.

The American Lithia Water, the best table water, in pints	doz.	\$1 20
* * * * *		
* * * * *		
* * * * *		
Hunyadi Janos Water, pints	doz.	1 20
* * * * *		
* * * * *		
* * * * *		

[Defendants' Exhibit "Sander Catalogue No. 2"].

DR. ENNO SANDER'S

MINERAL SPRING WATERS.

THEIR

Compositions, Therapeutics and Employment.

MANUFACTURED BY THE
ENNO SANDER MINERAL WATER CO.

125-129 South Eleventh Street,

ST. LOUIS.



Introduction.

About ten years ago I published the first pamphlet containing the different analyses of the mineral waters I then manufactured, and, although it was quite a limited affair, it earned for me the very pleasant recognition of physicians who were interested in the employment of mineral waters. But, since, I have learned that a pamphlet containing not alone the formulas for the solid ingredients of these waters, but also their descriptions, therapeutical values and medicinal employment, would be warmly welcomed by the profession, and, consequently, I have endeavored to meet this demand.

In the following, the principal European mineral spas, which are used by the medical profession of our country, and which I have been reproducing during more than thirty years with apparent success and to the satisfaction of my patrons, are described and discussed, and I hope that my manner has been sufficiently lucid and plain so as to attract the attention of interested physicians.

* * * * *

Enno Sander, PhD PhC

St. Louis, May, 1895.

*Hunyadi Janos, Ofen Bitter Water.**Highly Aerated.*

J. von Liebig:

In 16 ounces,

Sodium Bicarbonate	4.2763	grains.
Magnesium Sulphate	161.7904	"
Potassium "7428	"
Sodium "	109.4674	"
" Chloride	5.0732	"
Calcium "	6.1200	"
Alumina1200	"
Silica0900	"

287.6801 grains.

51 There are a considerable number of bitter waters brought into the market under the name of Hunyadi, with sundry mixtures, which, if not manufactured, have their origin in the so-called Selenfeld, near Ofen, a plain surrounded by the Adlerberge and bounded by the Danube in the east. This plain seems to consist of a bed of marl about 18 feet deep, which contains earthy and alkaline sulphates, and is underlaid by an impervious bed of clay; all the wells dug into the marl fill up with bitter water, more or less strong,

according to the situation and the atmospheric precipitation on the Adlerberge.

We manufacture this water after the original analysis of Justus von Liebig, published above, and as it contains large quantities of Epsom and Glauber Salts, which renders it highly purgative, it ought to be used in small doses only, a wineglassful diluted with hot water. By the addition of carbonic acid gas, we have successfully disguised its disagreeable, nauseating taste, and added also to its digestibility.

* * * * *

[Defendants' Exhibit "Defendants' Catalogue of 1899"].

*Our Waters are Renowned for their
Purity, Uniformity, and Freshness*



W. T. Wagner's Sons



*Our
Diamond
Distilled
Water
is used in
the
manufacture
of all our
Products*

*Artificial
Mineral Spring
and
Table Waters*



Cincinnati, Ohio

1920, 1922, 1924 and 1926 Race Street

PHONE 1602.



23

W. T. WAGNER'S SONS

CHEMICALLY PURE

Artificial Mineral Spring, Medicinal and
Table Waters.

THEIR COMPOSITION, PHYSIOLOGICAL ACTION,
THERAPEUTICS, AND
GENERAL EMPLOYMENT.

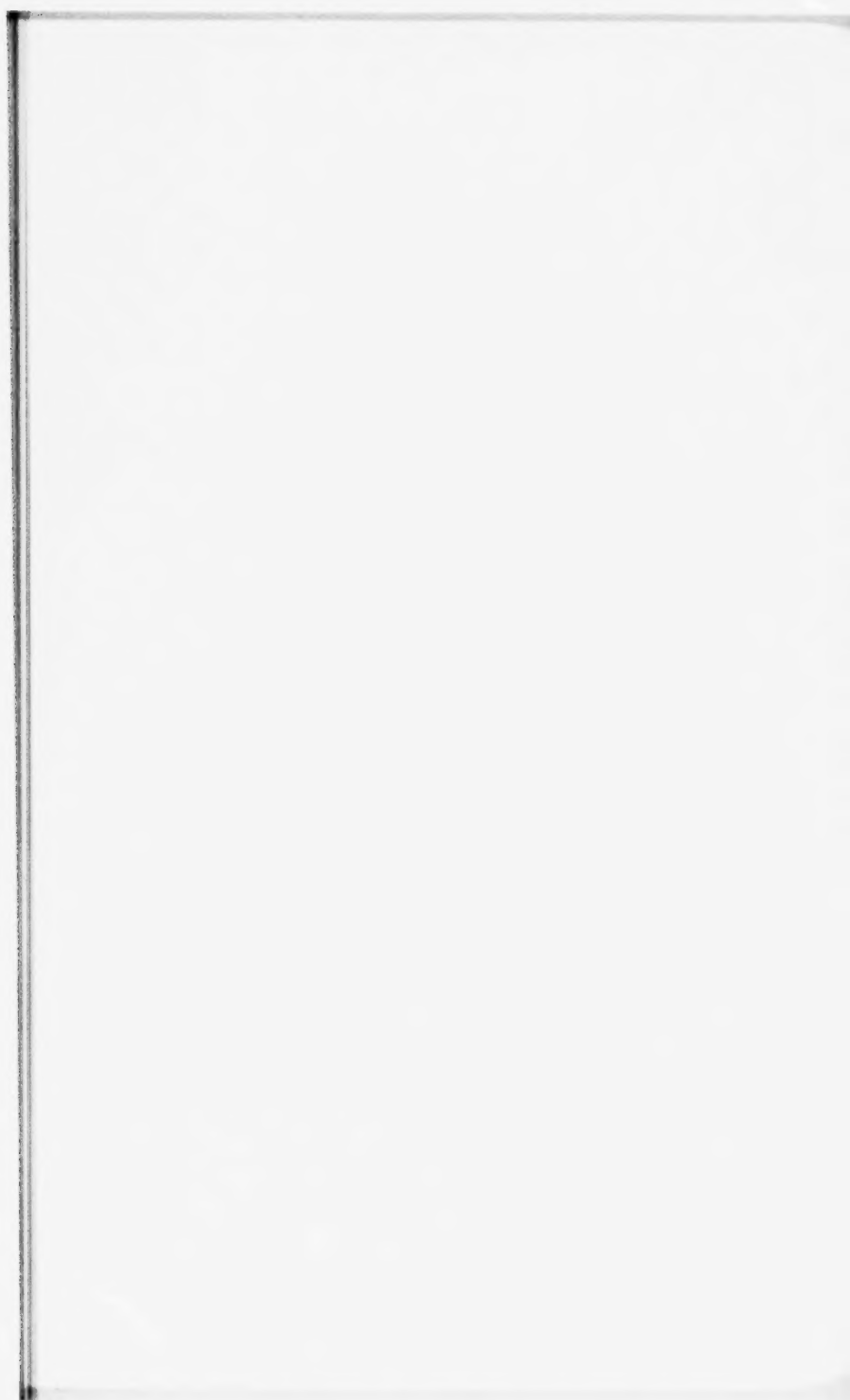
WITH TESTIMONIALS, AND LIST OF CINCINNATI PHYSICIANS
WHO USE AND RECOMMEND THEM.



CINCINNATI:

Nos. 1920, 1922, 1924 and 1926 Race Street.

1899.



Introduction.

Having manufactured artificial mineral waters for many years, we have earned a very pleasant recognition from the most eminent physicians who were interested in the employment of artificial mineral waters.

The issue of this pamphlet is undertaken upon the request of our many friends in the profession. It contains the analysis of all the waters we manufacture; also descriptions of the therapeutical values, and medicinal employment of mineral waters in general.

To our readers, and especially the few who may yet be possessed of some prejudice against artificial mineral waters, we will show and prove

Why Artificial Waters Should Have the Preference Over Natural Waters.

It is generally claimed by owners of springs that artificial mineral waters do not represent natural waters. To this we will reply that such claims are only made because it is to their own pecuniary interest. The following will show that

Artificial Mineral Waters, When Scientifically Prepared are by far Preferable to Natural Waters.

We cheerfully grant that the use of mineral waters at the springs is of great advantage to sufferers, because an individual who goes from home to drink them, finds himself in a different climate, with possibly a considerable change in altitude. His diet is necessarily altered, and his usual home drinks are given up. He is relieved from the routine of usual duties and thrown into new and probably cheerful society. He takes more exercise than when at home, and is more in the open air, and this, probably, at the best season of the year.

It is a well-known fact, demonstrated by experience as well as by chemical analysis, that

255 Natural Waters Undergo Great Changes

when drawn into barrels, bottles, jugs, etc., for transportation. This is mainly due to the influence of atmospheric air, the reduced pressure caused by the liberated carbonic acid gas, and the organic matter they contain. Such changes become manifest even to the eye and taste, and under all circumstances to chemical reagents. A close examination of bottled natural mineral waters, whether charged with carbonic acid gas or not, will prove this assertion. Waters which contain the salts of iron or manganese (and there are but few that do not) are especially sensitive when subjected to severe changes. Iron and manganese are found in waters as soluble ferrous and manganous bicarbonates, held in solution by carbonic acid gas; with the liberation of but small quantities of the latter, and the exposure to the oxygen in the atmospheric air, these salts oxidize very quickly, and are precipitated as insoluble oxides, which cannot afterwards be

redissolved by the addition of free carbonic acid gas. The higher the temperature of a spring, the more rapidly the oxidation of the above-mentioned salts takes place, so that Carlsbad Sprudel, for instance, is covered, within but a few minutes, with a red skum of oxidized iron and manganese. In those springs of a lower temperature, the oxidation is a somewhat slower, but yet none the less effective one.

It has further been demonstrated that

The Changes Which Natural Mineral Waters Undergo

in filling, storing and shipping, are due not only to the presence of iron and manganese contained in the water, but also to the loss of some of the gaseous substances by which many of the chemical combinations are interchanged, and others are rendered insoluble and precipitated when the pressure and temperature is lowered. Such changes are frequent, and easily noticed in waters containing large quantities of sulphates, by the foul odor and a taste of sulphuretted hydrogen.

Natural Mineral Waters are not Always of the Same Composition.

This fact is so well and generally known all over the world that it is hardly necessary to speak of it.

256 It has been proven that some mineral salts which are found in natural waters in a certain season of the year are entirely absent in another, while the quantities of some of them are surprisingly increased or decreased. It is also proven that owners of springs, before bottling, collect the waters in large tanks, subject them to atmospheric air, allow all such ingredients as are liable to oxidize and are rendered insoluble, to precipitate, and thus enable them to send out a water presentable in appearance. In other words,

The Natural Waters are Deprived of Such Ingredients as are of High Therapeutical and Physiological Value.

This, however, does not seem to inconvenience the owners any; they claim all those ingredients which the analysis of the fresh water shows, to be present in the doctored water just the same.

Why is it, therefore, that waters deprived of some of their most valuable medicinal ingredients are still offered and recommended to the public even by responsible parties?

There are, also, some owners who evaporate the waters of their springs to dryness, and are making the same claim regarding the medicinal value of the so-gained salt as of the natural waters, while they know quite well, and every chemist will agree with us, that

Waters Evaporated to Dryness, or the So-called Salts of the Springs, do not Represent the Respective Water.

Furthermore, every chemist knows—and will testify to our correctness—that the soluble bicarbonates of iron and manganese are

oxidized by such a process, and are thus rendered insoluble, and the bicarbonates of strontium, barium, calcium, magnesium, etc., are changed to insoluble carbonates by such evaporation, and are of little or no value in that state.

As unavoidable as the changes and fluctuations are, to which natural mineral waters are subjected when bottled, transported, or otherwise, just so easily these obstacles are overcome by the manufacturer of artificial mineral waters, by adopting a perfectly reliable analysis of a water, and scientifically and carefully compounding the same according to such analysis once and for all. This, however, should and can only be done by responsible chemists, and then only when none but the *purest of chemicals and distilled water* are being used.

True Artificial Mineral Waters Cannot Be Prepared from the So-called Mineral Salts.

CUT.

Some manufacturers are selling so-called mineral salts for making Vichy, Seltzers, Lithia, Kissingen, etc., etc. They claim that by dissolving their salts in water and impregnating this solution with carbonic acid gas, they will produce waters conforming to the analysis of the natural water. This is a misrepresentation;

artificial mineral waters cannot be prepared in this manner; the salts are simply compositions of their own, and

Waters Made from Them Are Worthless.

They do not represent natural waters in the least.

The Manufacture of Artificial Mineral Waters Has Become a Science.

It dates back as far as the Sixteenth Century, but was then merely experimental, and almost 300 years have elapsed since it became a science; and now, with the necessary care, precision, and technicalities,

The Absolutely Correct Artificial Reproduction of Natural Mineral Waters is No Longer a Myth.

The first factories of artificial mineral waters were started in Geneva and Paris at the end of the last century, and where there were but few in the early part of the Nineteenth

Century, there are now nearly 700 factories in Europe, and today

The Consumption of Artificial Waters by Far Exceeds that of Natural Waters in the European Countries.

Artificial mineral waters prepared by reliable chemists in a scientific manner are not liable to change from fluctuations in their relative

quantities of solid substances, and should, therefore, be preferred to natural waters by the medical profession and the public in general.

We conclude by saying that

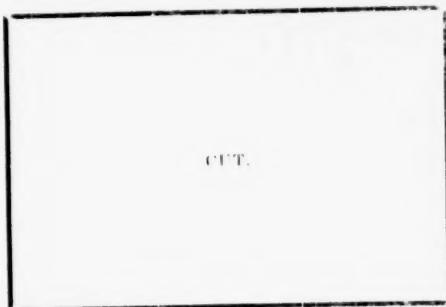
Our Method of Manufacturing Artificial Mineral Waters is the Only Correct, Secure and Reliable One.

It need hardly be mentioned that the greatest care is exercised in all its branches.

We have selected the most reliable analyses, acknowledged to be correct copies by the most renowned chemists. Having the latest improved apparatuses, the contact of air with the finished water is

absolutely prevented, the use of our Diamond distilled water, which is proven to be free from all organic matter, shuts out all probable decompositions.

The use of C. P. chemicals and the employment of a pure, inodorous carbonic acid gas made from bicarbonate of soda, positively results in products which cannot be excelled.



CUT.

"Our Solution and Compounding Room."

259 Utmost Cleanliness is Observed in Every Department of Our Factory.

All bottles used by us are scrupulously cleansed and carefully sterilized. In fact cleanliness is a rule of first importance, which is everywhere and at all times in full force with us.

We, therefore, do not hesitate to request the universal patronage of the medical profession as well as the public in general. We extend to all a cordial invitation to honor our works with a visit.

Respectfully,

W. T. WAGNER'S SONS.

JULIUS GREYER, *Chemist.*

[" Defendants' Exhibit—Defendants' Tennis Advertisement "].

INSIST UPON HAVING

WAGNER'S

THE ONLY PURE AND CORRECT

Artificial Mineral Waters

ON THE MARKET

DISTILLED WATER USED ONLY.

**Selters, Lithia, Vichy, Kissingen,
Hunyadi, Carlsbad, Minnehaha,
Sodium Phosphate & Others**

1920-26 RACE STREET

Telephone Main 1602.

Cincinnati, = = = = Ohio



261 262

34

[" Defendant's Exhibit--Defendants' Advertisement No. 1] "

WAGNER'S

ARTIFICIAL MINERAL WATERS.



Cut of Bottle.

CORRECTNESS
UNIFORMITY
EFFECTIVENESS
PURITY
ARE THE KEYNOTES OF
THEIR SUCCESS.

Cut of Bottle.

W. T. WAGNER'S SONS,

1920-26 RACE ST.

CINCINNATI, O.



1963

263 - 264

Defendants' Exhibit:

"Defendants' Business Card."



CINCINNATI, O.

PHONE. CANAL 2183





WELLS & WAGGARD'S
Sons
 BOTTLERS OF
ARTIFICIAL
MINERAL WATERS
 1920-26
 RACE ST.
 PREPARED FROM THE DISTILLED WATER
 CINCINNATI, O.
 TELEPHONE 1602

"Defendants' Bill Head."

EXHIBIT:
 SELLERS
 VIOHY
 CLUB SODA
 ALKALINE SALINE SPRINGS
 CARBONIC
 IMPERIAL MINERAL
 STILL & SPARKLING
 LITHIUM WATER



STATEMENT.

Cinnamom.

Defendants' Exhibit:
"Defendants' Statement."

IN ACCOUNT WITH



ACCIDENTAL MINERAL WASTES.

CINCINNATI, O., N. Y.

Defendants' Exhibit:
"Defendants' Envelope."

1105

269 & 270 COMPLAINANT'S EXHIBIT "DEFENDANTS' SECOND PAMPHLET."

Filed November 21, 1905.

CUT.

To
Defeat
Thirst

On a green spot in the desert,
Gleaming like an emerald star,
Where a palm tree in lone silence
Droops over a silver runnet
Slender as a scimitar.

To Defeat Thirst.

A Treatise on Drinks, Containing Valuable Information and
Recipes.

Water is the mother of the vine,
The nurse and fountain of fecundity,
The adorning and refresher of the world.

Compliments of
W. T. Wagner's Sons,
Manufacturers Artificial Mineral Waters,
Cincinnati, Ohio.

Copyright 1903,
W. T. Wagner's Sons,
Cincinnati, O.

Preface.

In presenting this little booklet to our many patrons we feel assured that we have compiled the first book on drinks which is of benefit to the general public, in its entirety. We have not only included the most delicious drinks that will quench the thirst or satisfy the craving of some healthy, robust body, but have added such drinks as are especially valuable to the invalid or sick, that is, such drinks as are enervating and nutritious.

The careful host or hostess will find embodied in this booklet drinks which bring good cheer, and lend an ever-ready, helping hand in the entertainment of a party of friends, thus increasing the sociability of any event.

W. T. WAGNER'S SONS.

To those who seek one another's health in a social drink;
 To those who aim to alleviate the thirst of the fever-stricken;
 To those who strive to cheer the invalid or sick with a strengthening,
 life-giving cup.
 This little booklet is most humbly dedicated.

Necessary Precautions in Successfully Compounding and Serving Drinks.

Do not place ice into a glass and then pour carbonated waters over it. Cool the bottles or siphons thoroughly and pour into a dry glass.

Do not have wine colder than about 50 degrees Fahrenheit. Having it colder destroys its flavor.

Do not drain your glass at one draught. Drink slowly, as it enhances the delicate aroma of any drink.

Carbonated waters should not be poured into liquors, wines or syrups, as by such proceeding the life of the drink is lost. Pour your wines, liquors or syrups into the correct quantity of carbonated water.

Have all your ingredients properly cooled in concocting a cold mixed drink, even though ice be used in the drink.

Pay strict attention to glasses. For carbonated waters thin glasses only should be used. Thin glasses are also by far preferable to the heavy tumblers in serving lemonades, etc.

For hot punches, toddies, etc., use glass sherbet cups. For cocktails, rhine wines, cold punches, etc., use a medium-sized wine glass. For juleps, lemonades, cobbler, fizzes, flips, etc., use tall, thin glasses. For heavy wines as Port, Sherry, etc., use small wine glasses.

NOTES.

Recipes.

(1) Lemonade for Parties.—Rub the rind of 8 lemons with 2 pounds granulated sugar until all the oil from them has been absorbed.

Put sugar in vessel of sufficient capacity, add juice of 14 large lemons, then pour 1 gallon of boiling water over same. When sugar is dissolved, strain and cool. It is then ready to serve, although it may be greatly improved by beating up the whites of 4 eggs with a little water, straining and adding this to the cooled lemonade.

Garnish with pineapple cut in cubes, slices of orange and lemon or fresh strawberries.

(A rich, tasty drink.)

(2) Soda Lemonade.—Prepare a syrup by cold process of the juice of 5 lemons, $\frac{3}{4}$ lb. loaf sugar and 1 pint of water, and strain. Then empty a siphon of cold Wagner's Club Soda in a lemonade bowl and pour in the syrup. Stir lightly. Garnish as in No. (1).

(A most delicious drink.)

The Club Soda lends a peculiar charm to this drink, making it superior to plain lemonade.

(3) Claret Lemonade.—The addition of 1 quart of good Claret to No. (1) or $\frac{3}{4}$ pint to No. (2) makes it a most satisfying, thirst quenching drink.

(4) Wine Lemonade.—To No. (1) add $1\frac{1}{2}$ pints, and to No. (2) add $\frac{3}{4}$ pint of either Sauterne, Delaware, Ives, Hock, or Catawba wine. An addition of a little sugar is necessary.

(No. (2) with wine is an especially cooling and bracing drink.)

(5) Soda Water.—Mix Wagner's Club Soda with various fruit syrups.

(Admirable for children.)

(6) Tea with Soda.—Take $\frac{1}{2}$ glass extra strong tea and dissolve in it 1 teaspoonful of sugar. Fill glass with Wagner's Club Soda.

(Superior to Iced Tea.)

(7) Tea Cobbler.—To No. (6) add 1 teaspoonful of Jamaica Rum and juice of $\frac{1}{4}$ lemon.

(An exhilarating tonic.)

(8) Orangeade Sparkling.—Dissolve $\frac{3}{4}$ lb. of sugar in 1 pint of water, add juice of 2 lemons and 1 oranges and strain. Empty 1 quart siphon of Wagner's Club Soda into a bowl. Pour in the syrup and garnish with pineapple cut in cubes.

(A delicacy anyone will enjoy.)

(9) Cider Cup.—Put into a bowl 1 pint of Minnehaha, then add 1 quart of sweet cider, the juice of 2 lemons, 4 tablespoonsful of brandy. Slice in 1 lemon and 1 orange. Be sure to have all ingredients cold before mixing.

(Rich and satisfying.)

(10) Velvet Bland.—Dissolve 3 tablespoonsful of powdered sugar in 1 pint of Sauterne wine. Pour this into a bowl containing 1 pint of Minnehaha and 2 pints of Dublin Stout.

(11) Snow Flake.—Take a large tumbler half full of rich milk, dissolve in it 2 teaspoonful of powdered sugar. Now fill glass with Minnehaha or Wagner's Selters.

(12) Claret Cup.—Into a cup of hot water put 2 tablespoonsful of powdered sugar, $\frac{1}{2}$ teaspoonful each of ground cinnamon and allspice and $\frac{1}{4}$ teaspoonful of ground cloves, dissolve and strain. Place a lump of ice into a bowl. Empty a quart siphon of Wagner's Club Soda and 3 pints of Claret into same. Now add juice of 1 lemon and the spiced syrup.

(An elegant drink for evening parties in summer.)

(13) High Ball. For high balls, Minnehaha, Wagner's Club Soda or Wagner's Lithia are preferable to any other diluents. It is a mere matter of taste whether to mix the whiskey with the diluent or whether to float it.

(The popular drink.)

(14) Brandy Fizz.—Into large tumbler place 1 teaspoonful of powdered sugar, the juice of $\frac{1}{4}$ lemon and 1 wineglass of brandy. Fill glass with fine ice, shake well and strain. Now fill glass with Minnehaha or Wagner's Club Soda.

(The Club Man's favorite.)

(15) Gin Fizz.—Same as No. (14), only use gin instead of brandy.

(16) Silver Fizz.—Same as No. (15), only add the white of an egg.

(17) Gold Fizz.—Same as No. (15), only add the yolk of an egg.

(Drink all Fizzes and similar drinks immediately. Upon standing much of their refreshing taste is lost.)

(18) Milk Punch.—Into a tumbler put 2 teaspoonsful of powdered sugar, 2 tablespoonsful of brandy, $\frac{1}{2}$ tablespoonful of rum, $\frac{1}{2}$ glass fine ice. Fill tumbler with milk, shake well, strain, and grate a little nutmeg on top.

(Invigorating after hard exercise.)

(19) Port Flip.—Into tumbler put 1 egg and 2 teaspoonsful of powdered sugar, fill $\frac{2}{3}$ full of fine ice, add a wineglassful of Port wine. Shake well and strain.



Ladies, your friends will always appreciate
a glass of Wagner's Selters.

(20) Sherry Flip.—Same as No. (19), only use Sherry wine instead of Port.

(21) Sherry and Egg.—Put in small glass a little Sherry wine, then break into glass one fresh egg and fill glass with Sherry.

(Very nourishing.)

(22) Claret Cobbler.—Dissolve 3 teaspoonsful of powdered sugar in a little water, using large tumbler, add juice of $\frac{1}{4}$ lemon and a slice of orange quartered. Then fill glass half full of shaved ice and fill up with Claret wine. Garnish with berries in season.

(Serve with straws. Very fine.)

(23) Catawba, Hock, Sauterne, Delaware and Rhine Wine Cobblers are all made in same manner as No. (22) except that the different wines are substituted for Claret.

(24) Half and Half.—Mix Porter or Stout with Ale in equal quantities.

(25) Rhine Wine and Selters.—Fill glass half full of Wagner's Selters, then fill up with Rhine wine.

Any other wine may be served in the same way with Selters.

(Refreshing and cooling.)

(26) Hot Cider Punch.—To 3 pints of hot sweet cider add 2 tablespoonsful of sugar, the juice of 2 lemons and 2 oranges, $\frac{1}{4}$ teaspoonful each of ground cinnamon and allspice and a pinch of cloves. Stir in 2 eggs and then add $\frac{3}{4}$ cup of rum.

A pint of Claret may also be used instead of the rum.

(Gives a friendly glow to the system on cold nights.)

NOTES.

(27) Milk Punch with Selters.—Dissolve tablespoonful of sugar in $\frac{1}{2}$ tumblerful of cold milk, add 1 tablespoonful of rum and 2 of brandy, then fill tumbler with Wagner's Selters.

(Satiating, refreshing.)

(28) Hot Milk Punch.—To 1 quart of hot milk add 2 teaspoonsful of sugar, a wineglassful of rum and 2 of brandy. Then beat in the whites of 2 eggs previously whipped stiff. Grate a little nutmeg on top.

(Called Eggnog when the whole eggs are used.)

(29) Fruit Punch.—Mix 1 grated pineapple or a can of grated pineapple with juice of 6 lemons and 2 oranges $\frac{1}{2}$ pint of water, and dissolve in same 2 cups of sugar. Then add either 1 quart of strawberries, red raspberries or seeded sour cherries slightly crushed. Cool this and stir in $1\frac{1}{2}$ pint of Wagner's Club Soda and serve as a drink.

If preserved berries are used take 1 cup of sugar instead of 2.

Elegant as Frappe when whites of 2 eggs are beaten in, 1 tablespoonful of rum added and frozen medium.

If desired, thoroughly crush fruit and strain before adding Club Soda.

(30) Hot Claret Punch.—Rub the rind of 3 lemons and 3 oranges with $1\frac{1}{2}$ pounds of sugar, add $\frac{1}{2}$ ounce whole cinnamon, 3 or 4 each of whole clove and allspice, a piece of mace and 1 pint of water. Boil and strain, after which add 5 quarts of Claret and bring to boil again.

(Serves 25 people.)

(31) Strawberry Punch.—Take juice of 12 lemons, $\frac{3}{4}$ lb. of sugar and $\frac{3}{4}$ pint of water, dissolve and strain. Then add 1 quart strawberry juice, 1 quart Claret wine and 3 pints of Minnehaha. Garnish with sliced oranges and lemons.

(Serves 25 people.)

I fill this cup to one made
of loveliness alone;
A woman, of her gentle sex
the seeming paragon.



"Minnehaha" is the prerequisite of a successful stag party.

(32) Sauterne Punch.—Dissolve 1 pound of sugar in juice of 12 lemons and 5 pints Sauterne wine. Then add 1 pint of brandy, $\frac{1}{4}$ pint of Apple brandy, 1 quart of Minnehaha or Wagner's Club Soda and 2 cans of pineapple cut in cubes.

(Serves 25 people.)

(33) Hot Wine Punch.—Dissolve $13\frac{1}{4}$ pounds of sugar in $2\frac{1}{2}$ pints of water by boiling and strain. Add juice of 3 lemons, $1\frac{1}{2}$ pint of Claret, 1 quart Delaware wine and 1 pint of rum. Bring to a boil and it is ready to serve.

(Serves 15 people. Ideal New Year's drink.)

(34) Manhattan Cocktail.—Into a glass filled $\frac{3}{4}$ with fine ice put 1 dash Angustora bitters, 1 teaspoonful of syrup, $\frac{1}{2}$ jigger Italiax vermouth, $\frac{1}{2}$ jigger whiskey and 2 dashes Maraschino. Stir well and strain. Add 1 Maraschino cherry.

(35) Martinez Cocktail.—Into a glass filled $\frac{3}{4}$ with fine ice put 2 dashes orange bitters, 1 teaspoonful of syrup, $\frac{1}{2}$ jigger gin and $\frac{1}{2}$ jigger vermouth. Stir well and strain. Add 1 Maraschino cherry.

(36) Vermouth Cocktail.—Into a glass filled $\frac{3}{4}$ with fine ice put 2 dashes Maraschino, 2 dashes Angustora bitters and 1 jigger vermouth. Stir well and strain. Add 1 cube of pineapple.

(37) Trilby Cocktail.—Into a glass filled $\frac{3}{4}$ with fine ice put 3 dashes raspberry syrup, 1 dash lemon juice 1 dash orange bitters, $\frac{1}{4}$ jigger vermouth and $\frac{1}{4}$ jigger of brandy. Stir well and strain. Add one cube of pineapple and either 1 cherry or 1 fresh strawberry.

(38) Beer and Soda.—Take $\frac{1}{2}$ glassful of Wagner's Club Soda, then fill with beer.

(A most refreshing Summer drink, seemingly a light beer with an abundance of life.)

NOTES.

(39) Apple Toddy.—Dissolve 1 heaped teaspoonful of powdered sugar in a little boiling water, then add 1 jigger of applejack (apple brandy) and the pulp of half of a baked apple. Upon this add boiling water until medium sized glass is $\frac{3}{4}$ full, stir well and grate a little nutmeg on top.

(40) Cider and Soda.—Take $\frac{1}{2}$ glass Wagner's Club Soda and then fill glass with cider.

(A perfect treat, having the zest of Champagne.)

(41) Mint Julep.—Put some mint in a tumbler, fill glass with fine ice add 1 dash orange bitters, 1 jigger whiskey, 2 dashes lemon juice. Stir well and fill glass to top with ice, place two nice sprigs of mint in glass; decorate with pineapple and berries, then add 2 dashes rum and serve with straws.

NOTE.—A jigger is about $1\frac{1}{2}$ ounces or 3 tablespoonsful.

CUT.

*The Use of Carbonated Waters at Meals**

*Reprinted from "Pacific Medical Journal," August, 1902.

By Alfred W. Perry, M. D., San Francisco, Cal.

CUT.

The earliest perceptible sign of disorder of the stomach is a derangement of its motor function. So common, necessary and important an accompaniment of any gastric disorder is this, that the great authority, I. Boas, has well said: "It is, therefore, the main task " " of gastric therapeutics to cure " disturbances in the motor functions " of the stomach." The motor derangement meant is a too prolonged closure of the pylorus, causing too long stay of the

stomach contents, as indicated by a sense of weight at the epigastrium, lasting an hour or more after eating, acid eructations and heartburn. An important function of the pylorus is to protect the intestines from the passage into them of irritating stomach contents; the stomach contents may be too irritating by reason of being too cold, too acid, presence of acetic or butyric acids, large pieces of food; this action at first conservative, becomes a cause of entire destruction of the gastric secreting glands, and also of dilatation, and ptosis of the stomach.

Practically no water is absorbed from the stomach; it must all pass first into the intestines before absorption into the blood takes place. It is well known that the amount of urine secreted in health is a measure of the absorption of water from the intestines, the blood pressure being unchanged from other causes. A stricture of the pylorus or an obstruction of the small intestine near the stomach reduces the urine to almost nothing.

The motor derangement is rarely primary. A stomach contents which would be irritating to the intestines from any cause, is held back by the pylorus. The conditions for a full, and rapid enough discharge of the stomach into the intestines, are a slight acid or

alkaline reaction, freedom from irritating substances, fine division of solids, and a heat of about 100° F. The use of cold water at meals, especially ice water, hinders this rapid discharge, and is, in my opinion the principal cause of dyspepsia in this country. I offer the following experiments on the effects of CO₂ water on the discharge of the stomach contents. The experiments I have made on the action of carbonic acid water, show the effect on the passage of liquids alone out of the stomach, and also of liquids with solid food:

First, a dilute 1-1000 solution of iodide of potass. was taken into the stomach, and the time when it could be detected in the saliva by the starch test, noted.

TABLE I.

Five grains, iodide potass., dissolved in—	Temperature.	Time taken.	Time showed in saliva.	Direct time to pass from intes- tine to salivary gland in min.	Time of passing into intestine in min.
		A. M.	A. M.		
8 ozs. chloro and water.....	60° F.	10:30	11:00	5'	25'
8 ozs. water.....	63° F.	10:30	10:48	5'	13'
8 ozs. carbonic acid water.....	64° F.	10:40	10:50	5'	5'
8 oz. Water & HCl 2000-1.....	60° F.	10:30	10:43	5'	8½'

TABLE II.

Amount of Urine Excreted in 80 Minutes.

No liquid taken for four hours previous to experiments.

After taking—	Tempera- ture of liquid.	Tempera- ture of the air.	Urine.
8 ozs. carbonic acid water.....	63° F.	58° F.	4.5 oz.
8 ozs. plain water.....	63° F.	58° F.	3.2 oz.
Nothing.....			2.5 oz.
8 ozs. carbonic acid water.....	68° F.	64° F.	6.1 oz.
8 ozs. plain water.....	68° F.	64° F.	4.4 oz.

This result of more than fifty experiments shows that where no liquid or food has been taken for four hours previously, the urine excreted in eighty minutes was 75 centimeters or grammes. After plain water at 64° F., 96 grammes. After carbonic acid water at 64° F., 135 grammes.

The use of carbonic acid in the water increased the diuresis, and also the passage of the liquid out of the stomach more than 40 per cent.

TABLE III.

Effect on Diuresis of Plain and Carbonated Water Taken at Different Temperatures with Mixed Meals.

Last urina- tion.	Time of meal.	LIQUIDS AT MEAL. Cubic centimeters.	URINE PASSED IN C. C.			Total amount in 3 hours.
			1:15 P. M.	2:15 P. M.	3:15 P. M.	
	P. M.					
12 M.	12:15	200 CC Tea at 120° F.....				
		200 CC Water at 60° F.....	63	69	45	177
12 M.	12:15	400 CC Tea at 120° F.....	73	67	54	195
12 M.	12:15	200 CC Tea at 120° F.....				
		200 CC Carbonated water at 62° F.....	64	68	68	200
12 M.	12:15	200 CC Tea at 120° F.....				
		200 CC Carbonated water at 86° F.....	129	106	96	331

Mean of fifty experiments.

Weidert,¹ by experiments made on himself in Penzold's laboratory, obtained the following results: The stomach was washed out before each experiment, and found to be healthy in its motor and secretory functions. A German roll was taken for breakfast with 500 cc. of plain, cold water, or 500 cc. of cold carbonated water on alternate days.

With plain water, the starch of the roll had been entirely changed and passed out of the stomach in two and one-half hours; while with carbonated water the conversion and emptying of the stomach was complete in one and three-quarter hours; this was ascertained by removing portions of the gastric contents with the tube, every fifteen minutes after eating. With a dinner of 250 grammes of beef-steak, using alternately plain water and carbonated water, digestion and emptying of the stomach was complete in respectively three hours and in two and three-quarter hours, showing a slight advantage for the CO₂ water. Water dissolves a little more than an equal volume of carbonic acid at ordinary temperatures, and this escapes rapidly at any increase in the temperature. I find that carbonated water, three minutes after being drawn from a siphon, contains as follows:

1 liter water at 66° F.	retains 2.80 gm. CO ₂ .
1 " " " 78° F.	" 2.30 " "
1 " " " 86° F.	" 1.90 " "
1 " " " 100° F.	" 1.00 " "

The water, at 73° and 86°, has enough CO₂ to give it a lively, pleasant taste.

¹ *Deutsches Archiv für Klin. Med.*, Vol. 73.

From Table III, it will be seen that the use of cold CO_2 increased the diuresis 12 per cent. over plain water; when these were used during meals, with CO_2 water at 86°F. , the diuresis, and presumably the stomach discharge, was increased 100 per cent. nearly. The results of Weidert given above agree substantially with my own; and we may conclude that although hot drinks at meals, or soon after, are generally best for most dyspeptics, for those who will not use hot drinks CO_2 water, cool or slightly warmed, has a very beneficial effect in causing a prompt discharge of the stomach contents.

Helps for the Sick.

The attention required by the sick, convalescent and invalids often taxes the ingenuity of the most careful nurses. So it is our aim in these few lines to give a little advice, which, when followed, will add greatly to the comfort of the sufferer, and thus aid in relieving the nurse of many unnecessary trials and tribulations.

We have selected the following formulae with the utmost care so that they may give the greatest of satisfaction. Each formula is accompanied by a note giving its specific uses.

(42) Lemon and Selters.—Squeeze the juice of $\frac{1}{4}$ lemon into a glass of Wagner's Selters and serve.

Of great value as a quencher of thirst, especially in cases of fever. It has a beneficial action on the nervous system, quieting and soothing nerves that have been unstrung by sickness.

(43) Milk and Selters.—Take $\frac{1}{2}$ glass of Wagner's Selters, then fill glass with milk. Either cold or hot milk may be used.

Used in cases of convalescence as nourishment and to assuage thirst. When the stomach from any cause will not retain pure milk, it will almost without exception retain selters with milk.

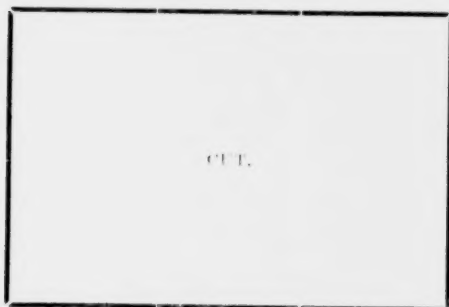
(44) Brandy and Soda.—To 1 glass Wagner's Club Soda add 1 to 2 tablespoonsful of Brandy.

Greatly used as a mild stimulant, to give tone to the system and to increase the appetite of the convalescent. Serves also as a nourishment.

(45A) Beef Tea.—Dissolve 1 teaspoonful of Extract of Beef in a cup of boiling water. Season with a little salt and pepper, or preferably a little celery salt instead of plain salt.

" * * * * Till taught by pain
Men really know not what good water's worth;
If you had been in Turkey or in Spain,
Or with a famish'd boat's-crow had your berth,
Or in a desert heard a camel's bell,
You'd wish yourself where truth is—in a well."

—Byron.



The good water is Wagner's Diamond Distilled Water. Learn to know its worth. The purest. The most perfect for home use.

(45B) Procure a round steak, trim off all fatty portions, cut into small pieces, sprinkle with a little salt and put it into a wine bottle. Immerse the bottle in an inclined position in a pot of cold water so that its neck shall protrude above the surface. Now heat water to boiling point and set aside. When cool pour the accumulated beef juice through a strainer, add salt and pepper to suit taste, whereupon it is ready for use. If it is to be used warm, heat over a water bath, and be sure that the broth does not come to a boil.

Beef tea is an excellent nutrient tonic. It stimulates the stomach and intestinal canal to healthy action after having lain dormant through protracted illness. While both formulæ given are valuable, we can especially recommend the latter, as it has many advantages over the former. Its main advantage lies in the fact that it contains a greater percentage of the essential tonic and nutrient constituents of the beef.

(46) Beef Tea with Egg.—Beat up an egg with a little water until perfectly smooth, then fill the cup with either hot or cold beef tea.

When the convalescence is considerably advanced, it is frequently necessary to increase nutrition, in which case the addition of the egg to the beef tea serves the purpose admirably without too suddenly taxing the strength of the stomach.

(47) Nothing is of more importance to the sick than an absolutely pure drinking water. The system, already weakened and susceptible, should not be exposed to the dangers connected with the drinking of either hydrant, cistern, rain or spring water. The surgeon in his work, also is in need of a water upon the purity of which he can rely. There being but one such water, namely, distilled water,

we would recommend the use of Wagner's Diamond Distilled Water. It is recognized as the purest by the entire medical profession.

(48) Egg-nog.—Thoroughly beat up one egg, a heaped teaspoonful of powdered sugar and a little milk in a large tumbler. Then add 2 tablespoonsful of brandy and 1 tablespoonful of rum, and fill glass with either hot or cold milk. Season with nutmeg.

In some few cases it is advisable to use only the yolk of the egg, as the white taxes the strength of the stomach. After a time a portion of the white may be added and its quantity gradually increased, so that at the end of 5 or 6 days the whole egg is used.

The quantities of rum and brandy may be increased or decreased to suit.

This drink has such nourishing properties that convalescent persons and invalids can subsist on it for protracted periods without evil results.

(49) Sherry and Soda.—Pour small wineglassful of Sherry into $1\frac{1}{2}$ tumbler of Wagner's Club Soda.

This is valuable as a tonic, producing increased appetite, acting as a light stimulant, and relieving that uncomfortable feeling after eating so often experienced by the convalescent.

(50) Hot Lemonade.—Take the juice of 1 lemon and a tablespoonful of powdered sugar to a tumbler of hot water. The addition of 1 tablespoonful of brandy or 2 of whiskey somewhat improves its action. Drink as hot as possible just before retiring.

Beneficial in colds and coughs, loosening the phlegm, relieving irritation of the throat and clearing the head.

(51) Whiskey and Glycerine.—Two teaspoonsful of glycerine in 2 tablespoonsful of whiskey.

To be taken for affections of the throat and lungs. Relieves irritation and loosens the phlegm.

To Cleanse the System.

Although the system at times requires a purgative, cases in which a regulation of the bowels is most necessary, are more frequent.

The stimulation of the action of the liver is that which brings about the required regularity. Strong purgatives are detrimental to such regulation. Therefore we suggest the use of Wagner's Carbonated Chemically Pure Sodium Phosphate.

The action of ordinary Sodium Phosphate is made more perfect by the purity of the salt we use and the presence of a large amount of carbonic acid gas, which greatly aids digestion.

The use of our Sodium Phosphate for three or four weeks in spring, by its mild laxative action and its unsurpassed stimulation of the liver, proves itself to be of greater value than any spring remedy as an eliminator of the impurities of the body.

Take 1 glassful of Wagner's Sodium Phosphate in the morning one-half hour before breakfast for a period of several weeks.

NOTE.—When too cold the action of the Sodium Phosphate is at times greatly hindered. In such cases take it at a temperature of about 70° or 80° Fahrenheit.

Points on Wagner's Diamond Lithia.

A Perfect Tablewater.

An unexcelled solvent of uric acid deposits.
A preventive of urinary diseases.
The greatest foe of rheumatism and gout.
An absolute cure in kidney, bladder, and urinary diseases.



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" MINNEHAHA "



Makes
the
Best
High-
Ball.

Wagner's Hunyadi

Produces a rapid action of the bowels. It never causes cramps and is easily borne by the stomach. It is highly carbonated, thus making it less nauseating than any of the natural Hunyadi waters. In a word, it is

The Best Purgative on the Market.

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Filed November 21, 1905.

W. T. Wagner's Sons.

"Here's to Your Health."

Artificial Mineral Spring and Table Waters.

Cincinnati,
U. S. A.W. T. Wagner's Sons
Chemically Pure

Artificial Mineral Spring, Medicinal, and Table Waters.

Their Composition, Physiological Action, Therapeutics, and General
Employment,With Testimonials, and List of Cincinnati Physicians Who Use and
Recommend Them.Cincinnati:
Nos. 1920, 1922, 1924, and 1926 Race Street.
1901.*Important to Consumers of Carbonated Waters.*

As we frequently meet with persons who are in the habit of cooling carbonated waters by putting ice into a tumbler and pouring the warm carbonated water over it, we wish to call the attention of our patrons, as well as of the general public, to the fact that it is not only considered bad taste to dispense carbonated waters in this manner, but that the waters also lose much of their effervescence, and, with it, the pleasing, cooling, and exhilarating effect, while their taste becomes flat and stale.

Carbonated waters should be cooled by placing the bottles or siphons in an ice chest, by laying them on ice, or by immersing them in ice water. By carefully recorking bottles partly used, and laying them in a cool place, the waters will retain their effervescence, life, and effectiveness.

Our Introductory as well as our article on Lithia Waters (pages 4-12) furnishes interesting information for everybody.

We, therefore, call special attention to these and invite a kind perusal of same.

Respectfully,

W. T. WAGNER'S SONS.

Announcement.

It may be of interest to our many friends and the public in general to know that since the issue of our last catalogue very extensive additions to the working force of our factory, laboratory, etc., have been accomplished. Whenever practicable new machinery and appliances have been added, so as to maintain the high standard of our waters, and to improve on them wherever it was possible. We venture to say that we have the most perfect plant for the manufacture of artificial mineral waters in the country to-day.

No higher praise nor better commendation could be given our waters than the simple statement that the most eminent physicians prescribe them with the utmost confidence in their exact composition, perfection, and purity, and the many testimonials received speak of the numerous beneficial results obtained by their employment.

To Physicians

it may be of interest to learn that we have added a microscopical and bacteriological department to our laboratory. This department will be at the service of the many physicians who may not be in possession of a microscope or have the time necessary for such work. Our chemist, Mr. Julius Greyer, will be glad and ever ready to make any examinations entrusted to him without any expense to them.

Introduction.

Having manufactured artificial mineral waters for many years, we have earned a very pleasant recognition from leading physicians who were interested in the employment of artificial mineral waters.

The issue of this pamphlet is undertaken upon the request of our many friends in the profession. It contains the analyses of all the waters we manufacture; also descriptions of the therapeutical values, and medicinal employment of mineral waters in general.

To our readers, and especially the few who may yet entertain some prejudice against artificial mineral waters, we will show and prove

Why Artificial Waters Should Have the Preference Over Natural Waters.

It is generally claimed by owners of springs that artificial mineral waters do not represent natural waters. To this we will reply that such claims are only made because it is to their own pecuniary interest. The following will show that

Artificial Mineral Waters, When Scientifically Prepared, are by Far Preferable to Natural Waters.

We cheerfully grant that the use of mineral waters at the springs is of great advantage to sufferers, because an individual who goes from home to drink them, finds himself in a different climate, with

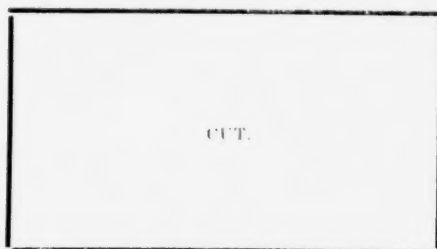
possibly a considerable change in altitude. His diet is necessarily altered, and his usual home drinks are given up. He is relieved from the routine of usual duties and thrown into new and probably cheerful society. He takes more exercise than when at home, and is more in the open air, and this, probably, at the best season of the year.

It is a well known fact, demonstrated by experience as well as by chemical analysis, that

Natural Waters Deteriorate and Undergo Great Changes

when drawn into barrels, bottles, jugs, etc., for transportation. This is mainly due to the influence of atmospheric air, the reduced pressure caused by the liberated carbonic acid gas, and the organic matter they contain. Such changes become manifest even to the eye and taste, and always to chemical reagents. A close examination of bottled natural mineral waters will prove our assertion.

Waters which contain the salts of iron or manganese (and there



A Corner of Our Chemical Laboratory.

are but few that do not) are especially sensitive when subjected to severe changes. Iron and manganese are found in waters as soluble ferrous and manganous bicarbonates, held in solution by carbonic acid gas; with the liberation of but small quantities of the latter,

and the exposure to the oxygen in the atmospheric air, these salts oxidize very quickly, and are precipitated as insoluble oxides, which cannot afterwards be redissolved by the addition of free carbonic acid gas. The higher the temperature of a spring, the more rapidly the oxidation of the above-mentioned salts takes place, so that Carlsbad Sprudel, for instance, is covered, within but a few minutes, with a red skum of oxidized iron and manganese. In those springs of a lower temperature, the oxidation is a somewhat slower, but yet none the less effective one. It has further been demonstrated that

The Changes Which Natural Mineral Waters Undergo in Filling, Storing and Shipping

are due not only to the presence of iron and manganese contained in the water, but also to the loss of some of the gaseous substances through which many of the chemical combinations are interchanged, and others are rendered insoluble and precipitated when the pressure and temperature is lowered. Such changes are frequent, and easily noticed in waters containing large quantities of sulphates, by the foul odor, and a taste of sulphuretted hydrogen.

Natural Mineral Waters are not Always of the Same Composition.

It has been proven that some mineral salts which are found in natural waters during a certain season of the year are entirely absent in another, while the quantities of others of them are surprisingly increased or decreased. It has also been proven that

Bottled Natural Waters are Seriously Contaminated With Organic Matter.

owing to a five or six days' exposure in large wooden tanks to the atmosphere, to which the owners of springs subject the waters before bottling.

This is done because most all mineral spring waters contain iron and other easily oxidizable substances, which, after having come in contact with air, become insoluble and are precipitated to the bottom of the bottles, giving them an unsightly, muddy appearance. For this reason, and because waters of objectionable appearance would hardly meet with ready sale, the owners treat the waters in the above described manner, thus ridding them of the matter objectionable to them. In other words,

The Bottled Natural Waters in the Market are Deprived of Just Such Ingredients as are of High Therapeutic Value.

This, however, does not seem to disturb the conscience of the owners of springs; they nevertheless claim all those ingredients present in their doctored waters, which analyses show to be present only in the waters freshly drawn from the springs. In many cases the owners of springs go so far as to make additions of table salt, soda or other chemicals to the water with the intention of either improving their taste or preventing their getting foul.

Apollinaris, Rheuser Brunn, Kaiserwasser, Wilhelmquelle, Kronthal, etc., etc., all pass through a manufacturing process of this kind, and therefore cease to be natural, and they are not even pure waters in any chemical or bacteriological sense. The dear public, however, is led to believe these waters are absolutely pure and natural, and it is hard to understand why waters, known to be contaminated and deprived of some of their most important and valuable medicinal ingredients, are still offered and recommended to the public even by responsible parties.

There are, also, some owners who evaporate the waters of their springs to dryness, and are making the same claim regarding the medicinal value of the so-gained salt as of the natural waters, while they know quite as well as does every chemist, that

Waters Evaporated to Dryness, or the So-called Salts of the Springs, Do Not Represent the Respective Waters.

Furthermore, every chemist knows—and will testify to our correctness—that the soluble bicarbonates of iron and manganese are oxidized by such a process, and are thus rendered insoluble, and the bicarbonates of strontium, barium, calcium, magnesium, etc., are changed to insoluble carbonates by such evaporation, and are of little or no value in that state.

As unavoidable as the changes and fluctuations are, to which natural mineral waters are subjected when bottled or transported,

just so easily these obstacles are overcome by the manufacturer of artificial mineral waters, by adopting a perfectly reliable analysis of a water, and scientifically and carefully compounding the same according to such analysis once and for all. This, however, should and can only be done by responsible chemists, and then only when none but the *purest of chemicals and distilled waters* are being used.

The Artificial Mineral Waters can not be Prepared from the So-called Mineral Salts.

Some manufacturers are selling so-called mineral salts for making Vichy, Seltzers, Lithia, Kissingen, etc., etc. They claim that by dissolving their salts in water and impregnating this solution with carbonic acid gas, they will produce waters conforming to the analysis of the natural water. This is a misrepresentation; artificial mineral waters can not be prepared in this manner; the salts are simply compositions of their own, and

Waters made from them are worthless;

they do not represent natural waters in the least.

The Manufacture of Artificial Mineral Waters has Become a Science.

It dates back as far as the Sixteenth Century, but was then merely experimental, and almost 300 years have elapsed since it became a

science; and now, with the necessary care, precision, and technical facilities the absolutely correct artificial reproduction of natural mineral waters is no longer a myth.

The first factories for artificial mineral waters were started in Geneva and Paris, at the end of the last century; and while there were but few



Our Solution and Compounding Room.



Our Generators for the Production of Pure Carbonic Acid Gas.

in the early part of the Nineteenth Century, there are now nearly 700 factories in Europe, and to-day the consumption of Artificial Waters by far exceeds that of Natural Waters in European countries.

It takes an exceedingly careful and experienced chemist to compound a water according to the analysis of a spring, so that

Artificial Mineral Waters made by persons not versed in chemistry are totally unreliable and detrimental,

hence be careful of whom you buy.

Artificial mineral waters prepared by reliable chemists in a scientific manner are not liable to change from fluctuations in their relative quantities of solid substances, and should, therefore, be preferred to natural waters by the medical profession and the public in general. We conclude by saying that

Our Method of Manufacturing Artificial Mineral Waters is the only Correct, Secure, and Reliable One.

It need hardly be mentioned that the greatest care is exercised in all its branches. We have selected the most reliable analyses acknowledged to be correct copies from the most renowned chemists. Having the latest improved apparatus, the contact of air with the finished water is absolutely prevented, and the use of our Diamond distilled water, which is proven to be free from all organic matter, shuts out all possible decompositions.

All of our compounding is done by a reputable and careful chemist. The use of C. P. chemicals and the employment of a pure carbonic acid gas made from bicarbonate of soda give results which positively cannot be surpassed. All bottles used by us are scrupulously cleansed and carefully sterilized. In fact cleanliness is the rule of first importance, which is everywhere and at all times in full force with us.

We, therefore, do not hesitate to request the universal patronage of the medical profession as well as the public in general. We extend to all a cordial invitation to honor our works with a visit.

Respectfully,

W. T. WAGNER'S SONS.

JULIUS GREYER, *Chemist.*

CUT.

Bottling Tables and Polishing Department.

CUT.

Lithia Waters and Piperazine Water.

Lithia Water.

The name *Lithia* was given the substance which Augustus Arfvedson, a Swedish student, had separated from *petalite* and other Swedish minerals.

The word was taken from the Greek (*Lithos*, a stone), and its derivation does not connect it with its solvent properties towards the stone-like concretions formed in the kidneys and bladder by *uric* (formerly called lithic) *acid* as many suppose, but was named so because it was the first alkali which had been directly obtained from the mineral kingdom.

Lithium is a monatomic element of the alkali group of metals. It appears as a silver white, soft metal, having a specific gravity of 0.5936, and is the lightest of all known metals. Lithium does not occur free in nature, but is met with as a phosphate in *amblygonite*, *triphylin*, and several other minerals, and as a fluoride or silicate in *lepidolite*, *spodumene*, etc. It is also found in very minute quantities in the ashes of some plants, in mineral springs, and thus is distributed widely throughout nature.

On account of the limited amount in which Lithium is found, and especially as it exists always in combination with the most insoluble constituents of the primordial rocks, its occurrence in natural waters is necessarily limited. It is not surprising, therefore, that most of the so-called *Lithia waters* offered to the public contain mere traces of *Lithia*, and sometimes none at all, but the name. The *Lithia* contained in most of the natural waters occur in the form of chloride or sulphate. These salts neither directly nor indirectly possess any solvent action on uric acid. This power is confined to the carbonates and especially to the bicarbonate.

The remarkable value of Lithium carbonate as a solvent of uric acid was first discovered in 1843 by Dr. Alexander Nure, but the employment of the substance in practical therapeutics was rendered impossible by its scarcity and high price. In 1858 Sir A. B. Garrod again commenced the administration of Lithium salts as an internal remedy with the most gratifying results. Since then the various Lithium salts have been experimented with by the highest authorities, and to-day the bicarbonate of Lithium is considered the greatest solvent of uric acid. It forms the exceedingly soluble urate of *Lithia*, attacks, redissolves and eliminates the urate deposits, and thus furnishes us the most effectual remedy for the treatment of *gout*, *rheumatism*, *gravel*, *kidney* and *bladder disorders*.

We respectfully call the attention of the medical profession to the composition and strength of

Wagner's Diamond Lithia Water.

Its analysis, given on page 16, shows that each gallon contains 85.33 grains of bicarbonate of Lithium, which is equal to 4 grains in one mineral-water glass (6 oz.). This makes

"Wagner's" the Strongest Lithia Water in the Market To-Day.

And we guarantee its contents as stated.

Our Lithia Water has a most agreeable soft taste, mixes well with wines and liquors, thus forming

Also a Most Excellent Table Water.

The quantity of Lithia it contains permits a liberal use of stimulants, and has a decided influence in preventing the effects of too great an indulgence, which is frequently required by the social obligations of gentlemen, and in which cases waters, containing an insufficient amount of the alkali, have little or no more effect than so much plain water.

Proprietors of especially American Lithia springs appear not to accept the chemical composition of their waters as a meter for the therapeutic value or the physiological action, but claim for them some supernatural curing powers, or some mysterious, subtle, but potent energies imparted by the touch of the Almighty—they prate of "God-given," "Heaven-endowed" fountains of health. Why, we will ask these, boast of the chemical composition of their waters, of the amount of Lithia it contains in comparison with others of the same class, why employ a chemist to make an analysis at all? Of what value is the chemical composition when they know their waters to be full of mysterious forces? Why not advertise these solely?

It is positively certain and quite comprehensible that

Lithia Water must contain Lithia in reasonable quantities to be deserving of the title "Lithia Water."

It is the Lithia which makes it therapeutically valuable. Most all the boldly-advertised so-called natural Lithia Waters contain but traces of Lithia, and surely do not deserve to be called so; however, the name "Lithia" is used to make the water sell.

For the Benefit of Those Interested, and to Substantiate that which has been Said about natural Lithia Waters,

We copy part of a most interesting paper which Dr. Elwyn Waller, Professor of Chemistry of the School of Mines in New York, has read before the American Chemical Society on

"The Determination of Lithia in Mineral Waters."

After having minutely described the different processes employed by him for the determination of Lithia, he continued:

"In order to test these methods upon water containing Lithia, samples of several of the best known and widely advertised waters were purchased and submitted to examination.

"The results were somewhat surprising, and showed unquestionably that either the original analysis, on the strength of which these waters are now sold, were erroneous on account of imperfection in

the methods used, or, what is more probable, that the proportions of Lithium in these waters are liable to great fluctuations.

"The results given were chiefly obtained by Carnot's fluoride method, but were, in several cases, confirmed by the use of other methods. The most scrupulous care was exercised to be sure of obtaining all of the lithium in the waters under examination, the spectroscopic indications having been used at every stage of the process.

"In the Farnville Lithia Water, purchased at the office of the company, no lithium could be detected by the spectroscope on moderate amounts of water. On evaporating eight litres of the water, and treating in the same manner described for the concentration of the lithia into a solution of small bulk, a lithia line was obtained in the spectroscope, but the amount was found to be too small to permit a quantitative estimation. The experiment was repeated with ten litres of the water, with essentially the same result.

"With the Buffalo Lithia Water, the reaction for lithium was more distinct when considerable quantities of water were concentrated. From twenty litres of the water was obtained lithium sulphate corresponding to 0.0185 parts lithium bicarbonate per 100,000.

"In the Londonderry Water, the lithia reaction could be obtained without great difficulty. Analysis of the water purchased by myself showed a little over four parts per 100,000. The company puts up some of the water in half-gallon bottles not charged with carbonic acid, and also some in pint bottles (called in their circulars 'sulpho-carbonated'), which is charged with carbonic acid, and has also received the addition of some salts. The amount of salts added appears to be somewhat irregular. * * * The proportion of lithium was essentially the same as for the still water.

"I was told that several lots of water, purporting to come from these springs, had at times appeared on the market, in which no lithia could be detected. As I learned that Dr. Endemann had obtained some water of that kind, I requested him to send me a bottle. He complied, and although the bottle bore all the labels and marks similar to those purchased by myself, no lithia could be detected in it. The water contained 5.2 parts total solids per 100,000. I have heard of others who had similar experiences.

"I naturally desired to obtain samples of these waters direct from the springs, taken by some one whom I knew to be disinterested. Attempts, so far, have been unsuccessful. In the case of the Londonderry Springs, all access is denied to visitors, and applications for water are referred to the bottling establishment in Nashua." * * *—*From the Journal of the American Chemical Society, Vol. XII, No. 6.*

It is to be regretted that the doctor did not succeed in obtaining his samples direct from the springs. The quantities found by him are smaller than contained in Saratoga Waters, which make no claim to be called Lithia Waters. It would, for instance, according to his results, be necessary to drink 92½ gallons of Buffalo Lithia Water to get a single grain of lithium bicarbonate, or, in other words, 4 oz. of Wagner's Diamond Lithia Water contain as much lithia as 246 gallons of Buffalo Lithia.

Lithia Tablets are Poor Substitutes for Lithia Water.

Most all Lithia tablets in the market contain but small quantities of *Lithium citrate*, which, in comparison with Lithium bicarbonate, might be called inactive. They also contain Sodium bicarbonate and Tartaric acid, both of which form carbonic acid gas, but in such insufficient quantity as to be unable to properly carbonate a single tablespoonful of water.

Wagner's Diamond Lithia Water (Sparkling.)

Geyer.	Parts in 100,000.	Grains in
		16 fluid ounces.
Lithium bicarbonate	146.08	10.6671
Sodium chloride	180.57	13.1857
Sodium bicarbonate	63.14	4.6106
Calcium bicarbonate	19.46	1.4210
Sodium sulphate	17.64	1.2881
Total	426.89	31.1725

One mineral-water glass (6 oz.) contains four grains of Lithium bicarbonate combined with the other salts, which are calculated to improve the action of the Lithium, as well as to make it most pleasant to the taste.

Our Diamond Lithia Water (Sparkling) is put up as follows:

In siphons (37 oz.) six in a case, per case.....	\$0.60
In quart bottles (24 oz.), one dozen in a box, per dozen.....	1.70
Rebate for box and bottles, 50 cents.	
In quart bottles, 50 bottles in a case, per case.....	5.00
Rebate for case and bottles, \$1.50.	
In pint bottles (16 oz.), one dozen in a case, per case.....	1.20
Rebate for case and bottles, 20 cents.	

Wagner's Diamond Lithia Water (Still.)

Our Diamond Still Lithia Water is of the same strength and composition as our Sparkling Lithia, the free carbonic acid gas only being omitted. There are cases where from idiosyncrasy of the individual, or from some peculiar irritability of the stomach, the carbonated water is not desirable, and it is for these cases we suggest the use of our Still Lithia Water.

Every bottle of our Diamond Still Lithia Water is sterilized, and being prepared from our Diamond Distilled Water, which is absolutely pure and free from any organic matter, the occurrence (too frequently seen in bottled natural waters) of algae, infusoria and micro-organisms is entirely prevented.

Our Diamond Still Lithia Water is put up in half-gallon bottles, one-half dozen in a case, per case \$1.75.

Rebate for case 25 cents, and bottles 30 cents.

Wagner's Vichy with Lithia.

	Parts in 100,000	Grains in 16 fluid ounces.		Parts in 100,000	Grains in 16 fluid ounces.
Lithium bicarbonate...	50.65	3.6287	Magnesium bicarbonate...	30.30	2.2125
Sodium chloride.....	53.40	3.8994	Calcium bicarbonate...	43.40	3.1692
Potassium sulphate....	33.65	2.4572	Ferrous bicarbonate....	0.40	0.0292
Sodium sulphate.....	1.41	0.1030	Sodium phosphate.....	13.00	0.9493
Strontium sulphate....	0.29	0.0212	Sodium arsenate.....	0.20	0.0145
Sodium bicarbonate....	517.53	37.7943	Silica.....	7.00	0.5112

Total parts in 100,000, 751.23. Total grains in 16 fluid ounces, 54.8566.

Vichy Water becomes more efficacious by the addition of Lithium bicarbonate, which combines with the superfluous uric acid in the system, and is eliminated through the kidneys. It is most beneficially employed in cases of *rheumatism* and *gout*, connected with *excessive acidity*, and may also be employed in all cases where the use of Vichy Water is indicated, and be given in the same doses.

Our Vichy with Lithia is put up in pint bottles (16 oz.), one dozen in a case, \$1.20.

Rebate for case and bottles, 20 cents.

Wagner's Carlsbad with Lithia.

Analysts	Parts in 100,000	Grains in 16 fluid ounces.		Parts in 100,000	Grains in 16 fluid ounces.
Lithium bicarbonate...	73.04	5.3335	Calcium bicarbonate....	46.38	3.3868
Sodium chloride.....	162.03	7.4651	Ferrous bicarbonate....	0.41	0.0299
Lithium chloride.....	1.41	0.1030	Manganous bicarbonate..	0.028	0.00204
Potassium sulphate....	18.62	1.3537	Sodium borate.....	0.40	0.0292
Sodium sulphate.....	240.49	17.5612	Sodium phosphate.....	0.074	0.0054
Strontium sulphate....	0.05	0.00365	Sodium fluoride.....	0.51	0.0372
Sodium bicarbonate....	186.12	13.5809	Silica.....	7.15	0.5221
Magnesium bicarbonate..	25.37	1.8526	Alumina.....	0.040	0.00291

Total parts in 100,000, 702.322. Total grains in 16 fluid ounces, 51.2852.

One mineral water glass (6 oz.) contains 2 grains of Lithium bicarbonate, in addition to Carlsbad Sprudel.

The combination of Carlsbad Sprudel with Lithium bicarbonate has produced wonderful and lasting effects in cases of *gout*, in which *catarrh* of the *stomach*, *abdominal plethora* and *hyperæmia* of the *liver* are prominent symptoms.

Our Carlsbad with Lithia is put up in pint bottles (16 oz.), one dozen in a case, per case \$1.20.

Rebate for case and bottles, 20 cents.

Wagner's Quadruple Carlsbad, with Lithium Benzoate.

	Parts in 100,000	Grains in 16 fluid ounces.		Parts in 100,000	Grains in 16 fluid ounces.
Lithium benzoate....	78.125	5.7049	Magnesium bicarbonate..	191.480	7.4103
Sodium chloride.....	408.920	29.8604	Calcium bicarbonate....	185.520	13.5471
Lithium chloride.....	5.640	0.4118	Manganous bicarbonate..	0.112	0.0082
Potassium sulphate....	71.480	5.4387	Sodium borate.....	1.600	0.1168
Sodium sulphate.....	361.960	26.2447	Sodium phosphate.....	0.296	0.0216
Strontium sulphate....	0.200	0.0146	Sodium fluoride.....	2.040	0.1490
Sodium bicarbonate....	1744.480	54.3638	Silica.....	28.600	2.0884
Ferrous bicarbonate...	1.640	0.1198	Alumina.....	0.160	0.0117

Total parts in 100,000, 2595.253. Total grains in 16 fluid ounces, 189.5118.

Each four fluid ounces contain one and one-half grains of Lithium Benzoate.

The water is put up in siphons (34 oz.), six in a case, per case \$1.00. Siphons to be returned.

Wagner's Quadruple Carlsbad, with Lithium Benzoate and Sodium Salicylate.

	Parts in 100,000	Grains in 16 fluid ounces.		Parts in 100,000	Grains in 16 fluid ounces.
Lithium benzoate.....	260.411	19.0159	Magnesium bicarbonate.....	101.480	7.4103
Sodium salicylate.....	520.821	38.0316	Calcium bicarbonate.....	185.520	13.5471
Sodium chloride.....	408.920	29.8603	Manganous bicarbonate.....	0.112	0.0082
Lithium chloride.....	5.610	0.4118	Sodium borate.....	1.600	0.1168
Potassium sulphate.....	74.480	5.4390	Sodium phosphate.....	0.296	0.0216
Sodium sulphate.....	961.960	70.2447	Sodium fluoride.....	2.040	0.1489
Strontium sulphate.....	0.200	0.0146	Silica.....	28.600	2.0884
Sodium bicarbonate.....	744.480	54.3638	Alumina.....	0.160	0.0117
Ferrous bicarbonate.....	1.640	0.1197			

Total parts in 100,000, 3298.360. Total grains in 16 fluid ounces, 240.8544.

Each four fluid ounces contains five grains of Lithium Benzoate and ten grains of Sodium Salicylate.

The water is put up in siphons (34 oz.), six in a case, per case \$1.20. Siphons to be returned.

The composition of the foregoing Quadruple Carlsbad with Lithium Benzoate, and Quadruple Carlsbad with Lithium Benzoate and Sodium Salicylate has been suggested by one of Cincinnati's most noted and eminent physicians. Since we brought them to the notice of the medical profession at large we received reports from a great many of our leading physicians who employed these waters in the various cases of *gout, rheumatism, gravel, kidney, and liver disorders* with general and most remarkable success.

Wagner's Piperazine Water.

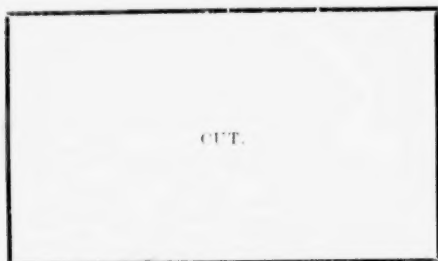
Piperazine is claimed to be a powerful solvent of uric acid, and is employed in diseases caused by a uric acid diathesis: *Gout, rheumatism, gravel, urinary calculous.*

Our Piperazine Water is a solution of Piperazine (Schering) in highly carbonated distilled water. We guarantee each bottle to contain one gramme (15½ grains) of Piperazine, and this constitutes the dose for a day, to be taken whenever thirsty, or as the Physician may direct.

Piperazine Water is put up in quart bottles (24 oz.), one dozen in a box, per box \$4.25.

Rebate for box and bottles, 50 cents.

NOTE.—While we do not wish to discourage the use of Piperazine Water in some particular cases, we will say right here that, from experience, no safer and more reliable and satisfactory solvent of uric acid has as yet been found than Lithium bicarbonate, in which form it is contained in our Diamond Lithia Water.



Alkaline and Muriated Alkaline Waters.

Alkaline Waters.

Alkaline Waters are waters in which sodium bicarbonate predominates, and free carbonic acid gas is often present in considerable quantities. Vichy Water is one of its most noted representatives.

VICHY (GRANDE GRILLE).

Analysis by Bouquet.

	Parts in 100,000.	GRAINS IN 16 fluid ounces.		Parts in 100,000.	GRAINS IN 16 fluid ounces.
Sodium chloride.....	53.40	3.8994	Calcium bicarbonate....	43.40	3.1692
Potassium sulphate.....	33.65	2.4572	Ferrous bicarbonate....	0.40	0.0292
Sodium sulphate.....	1.41	0.1029	Sodium phosphate.....	13.00	0.9493
Strontium sulphate.....	0.29	0.0212	Sodium arseniate.....	0.20	0.0146
Sodium bicarbonate.....	517.53	37.7913	Silica.....	7.00	0.5111
Magnesium bicarbonate.	30.30	2.2126			

Total parts in 100,000, 700.58 Total grains in 16 fluid ounces, 51.1580.

Vichy, a town in France, situated on the right bank of the Allier River, owes its importance to its mineral springs, which were celebrated in the time of the Romans. The promenade at the springs commands a splendid view of the mountains of Auvergne.

The most popular of the several springs at Vichy—all of which show but slight differences in their contents, excepting the temperature, which ranges between 50 and 102 degrees F.—is the *Grand Grille* spring, and has, therefore, been adopted as our standard. By the addition of an excess of carbonic acid gas we have improved its taste and added greatly to its digestibility.

The administration of Vichy Water renders the system *alkaline*; it increases the *secretions* and promotes *menstruation*, and, by its *diuretic action*, greatly facilitates the *elimination of renal calculi and gravel*, and, while it serves as a *preventive of calculus* in the bladder, its reputation as a solvent or *stone in the bladder* is without foundation.

Vichy Water proves very useful in certain forms of *indigestion*, aversion to food, depression after meals, nausea, and also in *liver complaint*, and should be taken with and after, but not before meals. The form of *dyspepsia* in which Vichy Water is peculiarly

useful is that form attended with acidity of the *primæ viæ*, of which the chief symptoms are sour eructation, vomiting, heartburn, flatulence, and often acid liquid stools. In *saccharine diabetes*, occurring in persons of an obese habit, there is little doubt that the prolonged use of Vichy is sometimes of marked benefit; it is less so, however, where the patients are thin and of a nervous constitution.

Vichy Water is also celebrated for its utility in *gout*, especially so in the simple and regular forms of the disease occurring in persons of good constitution and not yet exhausted by repeated attacks or by the complications to which the gouty become subject; in the latter case, the system is already impaired and unable to sustain the debilitating influence of an alkaline treatment.

Vichy water, with its excess of carbonic acid gas, is a most refreshing drink, either plain or mixed with wine or brandy, and is very beneficial to people who enjoy a rich table and who are apt to suffer from *acidity of the stomach*.

The so-called Vichy Pastilles are but a simple mixture of bicarbonate of sodium, sugar, and gum, sometimes flavored. They have no identity with Vichy water, and are worthless.

Vichy, When Taken in Connection with Kissingen (Pandur).

is a most reliable and harmless remedy to diminish and cure over-fatness.

Upon application we will be pleased to mail an essay "On the Reduction of Obesity," by Wm. J. Cathell, A. M., M. D., of Baltimore, Maryland, read at the ninety-ninth annual meeting of the Medical and Chirurgical Faculty of the State of Maryland.

Our Vichy water is put up as follows:

In siphons (37 oz.), six in case, per case.....	\$ 60
In quart bottles (24 oz.), per doz.....	1 70
Rebate for box and bottles, 50 cents.	
In quart bottles, 50 bottles in a case, per case.....	5 00
Rebate for case and bottles, \$1.50.	
In pint bottles (16 oz.), 1 doz. in a case, per case.....	1 20
Rebate for case and bottles, 20 cents.	

Vichy with Lithia.

We manufacture Vichy (Grand Grille) in combination with Lithium bicarbonate under this name. For particulars see page 17.

Aqua Alcalina, Fortior.

(Prof. W. Jaworski, M. D., Krakau.)

Alkaline Water No. 1.

	Parts in 100,000.	Grains in 16 fluid ounces.
Sodium bicarbonate cryst.	800.0	58.418
“ salicylate “	250.0	18.255
“ borate “	200.0	14.604
Total	1250.0	91.277

Aqua Alcalina, Mitior.

(Prof. W. Jaworski, M. D., Krakau.)

Alkaline Water No. 2.

	Parts in 100,000.	Grains in 16 fluid ounces.
Sodium bicarbonate cryst.	500.0	36.511
“ salicylate “	200.0	14.604
“ borate “	100.0	7.302
Total	800.00	58.417

These waters are put up as follows:

In pint (16 oz.) bottles, 1 doz. in case, per case, \$1 20

Rebate for case and bottles, 20 cents.

The above two Alkaline Waters are the composition of Prof. W. Jaworski, M. D., in Krakau, and are manufactured by us upon the request of some of our most eminent physicians, who have tried these waters with good results.

Prof. Jaworski writes as follows: (Translated from the *Therapeutische Monatshefte*, II Vol., No. 9, September, 1897.)

The dose of Aqua Alkalina No. 1, or *Fortior*, is one-half tumblerful fasting and of No. 2, or *Mitior*, one-third to one-half tumblerful after each eating; other drinking water to be omitted.”

The water has the following advantages:

1. The gnawing thirst of the patient is quenched with much smaller quantities, than with ordinary drinking water, which is of great advantage in case of *stomach dilation*. Furthermore, the physician in prescribing alkaline water has the ability to control the quantity of water to be administered in case of this disease.

2. Heartburn and the pressure and pains disappear not only because the acidity is diminished, but also *because of the presence of carbonic acid* with its sedative effects.

3. In cases of *stomachic fermentation* the latter will gradually disappear, especially if Water No. 1 is taken in the morning before breakfast. If, while drinking the Alkaline Water, a proper dietetic

regimen is observed, it will even be possible to achieve a fixed diminution of the acidity of the stomach contents.

4. In case of *digestive hyperacidity* and in pure cases of *continual hypersecretion*, a noted diminution of the subjective symptoms will be achieved by drinking the Alkaline Water in quantities of one-half to one tumblerful one-half or one hour after meals, but a lasting diminution of the acidity will not be accomplished in every case.

In cases of *acid catarrh of the stomach* (*gastritis acida*, German), however, the Alkaline Water will not only allay the subjective symptoms, but will also neutralize the acid present and lessen the hydrochloric acid secretion.

The best results are obtained in the treatment of *fermentative hyperacidity* by using Alkaline Water No. 1, or Fortior.

5. I have obtained most excellent results in cases of *uric acid diathesis* and *uric lithiasis* by using the Alkaline Water for some length of time. This is especially beneficial in those cases which are accompanied by dyspeptic manifestations (heartburn, pressure in the stomach, etc.). For this purpose the Water No. 2, or Mitior, should be taken before breakfast and during the day to the amount of at least a quart a day.

6. I have prescribed the water in cases of *cholelithiasis* as well as *icterus catarrhalis*, and in the majority with good results. For this purpose I prescribe the No. 2, or mild water, in quantities of one to one and one-half glassfuls before breakfast and two to three glassfuls during the day.

Muriated Alkaline Waters.

The physiological effects of Muriated Alkaline Waters are produced by bicarbonate of sodium, chloride of sodium, and carbonic acid gas, modified, to some extent, by other mineral ingredients which these might contain. Their effect is most beneficial upon the human body. They decrease the *acidity* of the stomach, promote *digestion*, and, without acting either as strong aperients or diuretics, they lend tone and vigor to the whole system.

SELTZER.

Analysis by F. A. Strauss

	Parts in 100,000.	Grains in 16 fluid ounces.		Parts in 100,000.	Grains in 16 fluid ounces.
Potassium sulphate, . . .	5.169	0.3774	Calcium fluoride,	0.023	0.0017
Potassium chloride, . . .	4.662	0.3404	Barium bicarbonate, . .	0.0306	0.00223
Sodium bicarbonate, . .	113.379	8.2792	Strontium bicarbonate	0.321	0.0234
Sodium phosphate, . . .	0.055	0.0040	Magnesium bicarbonate	39.683	2.8977
Sodium chloride,	225.156	16.4414	Alumina,	0.017	0.00124
Calcium bicarbonate, . .	35.037	2.5585	Silica,	3.932	0.2871

Total parts in 100,000, 427.4646. Total grains in 16 fluid ounces, 31.21427.

Selters (Niederselters) is a village in the district of Wiesbaden, Germany. Its celebrated spring was discovered in the first part of the Sixteenth Century, and but little attention was paid it until nearly the Nineteenth Century. The spring is visited by very few people, and most of its water is being bottled and shipped from there. On account of its pure and pleasing taste, it was, at one time, the favorite effervescing beverage for almost the whole of Germany, and enormous quantities were being exported. Of late, however, Selters has lost its excess of carbonic acid gas and has become lifeless and flat.

Medicinally, it is advantageously employed in *chronic catarrh of the respiratory organs, the stomach, and in chronic bronchitis, after the inflammatory irritation has subsided*. It is also beneficial in *hemorrhoids* with inflammation of the mucous membrane, and hemorrhage arising from pressure of stercoral matters, and from abdominal plethora, and with consequent affections of the nerves. Its use in such cases should be continued regularly, as the disease is apt to return.

Selters is very soothing when mixed with milk (hot or cold) in cases where the mucous membranes of organs have become very sensitive.

Since Selters water has proved itself an excellent table water, numerous manufacturers in Germany have undertaken to put waters upon the market which they claim to be natural products, but which are mainly spring or well waters from which the iron has been removed by exposure to the air, then, if deemed desirable, additions of salt and soda are made after which they are charged with carbonic acid gas, so as to make them sparkle. Having been subjected to alterations as described, they certainly cease to be "pure" or "natural waters;" and the labels on the bottles are gross misrepresentations.

As waters belonging to this class we will mention Wilhelmsquelle, Apollinaris, Rhenser Brummen, Genoveva Brummen, Kaiserwasser, Birresborn, etc.

Our Selters is manufactured according to the above analysis, which is acknowledged to be the standard by the profession. It has an abundance of carbonic acid gas and sparkles lively under all conditions:

Selters is put up as follows:

In siphons (37 oz.), six in a case, per case,	\$ 60
In quart bottles (24 oz.), per dozen,	1 70
Rebate for box and bottles, 50 cents.	
In quart bottles, 50 bottles in a case, per case,	5 00
Rebate for case and bottles, \$1.50.	
In pint bottles (16 oz.), one dozen in a case, per case,	1 20
Rebate for case and bottles, 20 cents.	

EMS (KRAENCHEN).

Analysis by Fresenius.

	Parts in 100,000.	Grains in 16 fluid ounces.		Parts in 100,000.	Grains in 16 fluid ounces.
Sodium iodide.....	0.002	0.000146	Sodium bicarbonate.....	198.86	14.5212
Sodium bromide.....	0.034	0.002482	Magnesium bicarbonate.....	20.70	1.5115
Ammonium chloride.....	0.18	0.01314	Calcium bicarbonate.....	21.62	1.5787
Sodium chloride.....	97.72	7.1337	Ferrous bicarbonate.....	0.20	0.0146
Lithium chloride.....	0.29	0.0212	Magnesium bicarbonate.....	0.017	0.00124
Potassium sulphate.....	3.68	0.2687	Sodium phosphate.....	0.165	0.01205
Sodium sulphate.....	3.13	0.2286	Silica.....	4.97	0.3629
Strontium sulphate.....	0.22	0.0161	Alumina.....	0.005	0.000365
Barium sulphate.....	0.10	0.0073			

Total parts in 100,000, 351.893. Total grains in 16 fluid ounces, 25.6969 23.

Ems, a city and one of the oldest and most renowned watering places in Germany, in the district of Wiesbaden, is situated on the Lahn, seven miles south-east of Coblenz, in a beautiful valley surrounded by wooded mountains and vine-clad hills. It is here, where, on the 13th of July, 1870, that famous interview between King William of Prussia and the French Ambassador, Benedetti, took place, which resulted in the Franco-German war.

Ems has about twenty springs, which differ only slightly, and then mostly in the temperature and in the amount of carbonic acid gas. Kraenchen, the most noted of all the springs there, is, on account of its high temperature (95 degrees F.) and alkaline character, preferable to Selters in acute *catarrhal* and *pulmonary diseases*, and in that dry, nauseating morning cough which requires a mild, hot solvent.

It is employed with great success in all female diseases, particularly in *hypertrophy* and *swelling of the uterus*, and the subsequent *sterility* connected with these maladies. It is of great value, also, in *catarrh of the larynx*, so often met with in public speakers, teachers, singers, clergymen, etc., due to an *over-action* of the vocal organs; also in catarrhs where the follicles of the mucous membranes have assumed a granular appearance.

In prescribing Ems Kraenchen the patient should, in most cases, be directed to drink it warm, by heating a part of it in a silver cup and mixing it with sufficient of the cold spa to give it the desired temperature. In this way a large part of the carbonic acid gas is retained. A great many physicians order Ems to be taken mixed with equal quantities of hot milk.

Our Ems (Kraenchen) is guaranteed to correspond with the above analysis.

It is put up as follows:

In quart bottles (24 oz.), per dozen..... \$1.70

Rebate for box and bottles, 50 cents.

In quart bottles, 50 bottles in a case, per case..... 5.00

Rebate for case and bottles, \$1.50.

In pint bottles (16 oz.), one dozen in case, per case..... 1.20

Rebate for case and bottles, 20 cents.



Alkaline Saline and Muriated Waters.

Alkaline Saline Waters.

The physiological effects of *alkaline saline waters* are produced mainly by sulphate, chloride, and bicarbonate of sodium, modified by other salts and free carbonic acid gas.

CARLSBAD (SPRUDEL).

Analysis by E. Ludwig.

	Parts in 100,000.	Grains in 16 fluid ounces.		Parts in 100,000.	Grains in 16 fluid ounces.
Sodium chloride,	102.23	7.4651	Ferrous bicarbonate, . . .	0.41	0.0299
Lithium chloride,	1.41	0.1030	Manganous bicarbonate, . .	0.028	0.00204
Potassium sulphate,	18.62	1.5397	Sodium borate,	0.40	0.0292
Sodium sulphate,	240.49	17.5612	Sodium phosphate,	0.074	0.0054
Strontium sulphate,	0.05	0.00365	Sodium fluoride,	0.51	0.0372
Sodium bicarbonate,	186.12	13.5909	Silica,	7.15	0.5221
Magnesium bicarbonate, . .	25.37	1.8526	Alumina,	0.040	0.00291
Calcium bicarbonate,	46.38	3.3868			

Total parts in 100,000, 629.282. Total grains in 16 fluid ounces, 45.9517.

The City of Carlsbad is one of the most aristocratic watering resorts of Europe. It is situated in the northwestern part of Bohemia, in a narrow, most romantic valley, between steep granite mountains, near the junction of the Tepl with the Eger. It has an inhabitation numbering about twelve thousand, and is frequented mainly between the middle of June and August by from twelve to twenty thousand visitors. There are twelve springs in Carlsbad, which differ only slightly in their compositions, but considerably in their temperature, which varies all the way from 130 to 162 degrees F.

The most important and hottest of all, the "Sprudel," has a temperature of 162 degrees F. It throws its water to a height of more than three feet to the amount of 650 gallons per minute. It is called the representative of all alkaline saline springs, and its analysis, as published above, has been adopted by us as the standard for our manufacture.

Carlsbad Sprudel is principally used in disorders and obstructions of the *liver* and the *alimentary canal*, in habitual *constipation*, due to sedentary habits and connected with disturbed abdominal circula-

tion, in *catarrh* of the *stomach* and the *hepatic ducts*. It is an incomparable remedy for the *removal of gall stones*, and of great value in the treatment of *hyperemia of the liver*.

Warm Carlsbad Sprudel is the principal and most effective remedy for ulcers in the stomach.

Upon the request of a number of physicians who have been disappointed by the uncertain action of the so-called natural Carlsbad Sprudel salt, and who have experienced the excellent effects of our Carlsbad water upon the system, we now manufacture the same of double and quadruple strength, in which every ingredient is either doubled or quadrupled.

Carlsbad, single or double strength, when used cold has a mild, but certain effect upon the bowels, which is more permanent than that produced by strong purgative waters.

Double Carlsbad resembles Marienbad (Kreuzbrunnen) in action, but is somewhat stronger.

Quadruple Carlsbad approaches the strong bitter-waters in effectiveness.

When prescribing our Carlsbad waters, physicians are kindly requested to specify such, as

Wagner's Single Carlsbad Sprudel,

Wagner's Double Carlsbad Sprudel,

Wagner's Quadruple Carlsbad Sprudel.

Regarding the so-called imported natural and artificial Carlsbad Salts, we wish to say that none of these salts resemble, represent, or equal Carlsbad Water, and they are no substitutes for the same, as claimed by the proprietors or manufacturers. These salts act merely as simple purgatives, and are expensive for the purpose. For proofs of our assertions we refer our kind readers to page 7 of this pamphlet.

Our Carlsbad Waters are put up in pint bottles (16 oz.), one dozen in a case, per case, \$1 20

Rebate for case and bottles, 20 cents.

We also manufacture several combinations of Carlsbad Sprudel with Lithium, viz:

Carlsbad with Lithia.

Quadruple Carlsbad with Lithium Benzoate.

Quadruple Carlsbad with Lithium Benzoate and

Sodium Salicylate.

These will be found on pages 18, 19.

Muriated Waters.

The physiological effects of Muriated Waters are produced by the absolute predominance of alkaline chlorides, and Kissingen (Pandur) is one of the prominent representatives.

KISSINGEN (PANDUR).

Analysis by Liebig.

	Parts in 100,000.	Grains in 16 fluid ounces.		Parts in 100,000.	Grains in 16 fluid ounces.
Sodium bromide	0.71	0.0518	Calcium sulphate	22.47	1.6408
Ammonium chloride	0.78	0.0570	Calcium bicarbonate	154.87	11.3090
Sodium chloride	551.48	40.2705	Ferrons bicarbonate	3.82	0.2789
Lithium chloride	1.68	0.1227	Sodium nitrate	0.35	0.0256
Magnesium chloride	30.34	2.6536	Sodium phosphate	0.55	0.0402
Potassium sulphate	28.21	2.0600	Silica	0.41	0.0299
Magnesium Sulphate	46.99	3.4313			

Total parts in 100,000, 848.00. Total grains in 16 fluid ounces, 61.9713.

Kissingen is the most popular watering resort in Bavaria, Germany, frequented annually by from 10,000 to 15,000 visitors. Its principal springs are the Pandur, Ragozzi, and Maxbrunnen. The water of the Pandur spring is the most pleasant to the taste, the more desirable for individuals of a weak constitution, and contains the most carbonic acid gas.

Kissingen (Pandur) has a most refreshing, slightly bitter saline taste; it stimulates the mucous membranes of the stomach and increases hunger and thirst. Its action is principally *diuretic*, and, according to Dr. A. B. Granville, it is aperient only if large doses, say two or three glasses, are taken. It is very effective in *Chronic Catarrh of the Stomach* and the lower intestines, in diseases of the *liver* and *spleen*, and such complaints as have been produced by the abuse of intoxicating liquors or the pleasures of the table.

Kissingen excites the *secretions of the intestines, kidneys, and the skin*, it reduces *habitual plethora*, and promotes a healthy metamorphosis of matter. It is also most beneficial in *Chronic Catarrh of the Uterus* and in other female complaints, in diseases of the skin, and *impurities of the complexion*.

The water may be administered in doses of one or two pints per day.

Kissingen (Pandur) taken in connection with Vichy (Grand Grille) is a most reliable and harmless remedy to diminish and cure *Over-fatness*.

Upon application we will be pleased to mail an essay "On the Reduction of Obesity," by Wm. T. Cathell, A. M., M. D., of Baltimore, Maryland.

Our Kissingen (Pandur) is manufactured according to the above analysis; it is a strong, but yet a very pleasant water to drink.

The water is put up as follows:

In siphons (37 oz.), six bottles in a case, per case \$0.60

In quart bottles (24 oz.), per dozen 1.70

Rebate for box and bottles, 50 cents.

In quart bottles, 50 bottles in a case, per case 5.00

Rebate for case and bottles, \$1.50.

In pint bottles (16 oz.), one dozen in a case, per case 1.20

Rebate for case and bottles, 20 cents.

WAGNER'S DIAMOND SARATOGA WATER.

Analysis: Average of Fifteen of the Principal Saratoga Springs.

	Parts in 100,000	Grains in 16 fluid ounces.		Parts in 100,000	Grains in 16 fluid ounces.
Sodium chloride.....	732.9505	53.5219	Strontium bicarbonate...	0.1537	0.0112
Potassium chloride...	21.5600	1.5744	Barium bicarbonate....	2.1122	0.1542
Sodium bromide.....	3.3658	0.2458	Ferrous bicarbonate...	1.9124	0.1396
Sodium iodide.....	0.1810	0.0132	Potassium sulphate....	2.1276	0.1554
Lithium bicarbonate...	7.6146	0.5690	Sodium phosphate....	0.9130	0.0009
Sodium bicarbonate....	43.6346	3.1863	Silica.....	2.8880	0.2109
Magnesium bicarbonate...	152.8513	11.1616	Alumina.....	0.5026	0.0367
Calcium bicarbonate...	207.9628	15.1800			

Total parts in 100,000, 1,179,8201. Total grains in 16 fluid ounces, 86,1541.

Saratoga is one of the most fashionable summer resorts in the United States, situated in the eastern part of Saratoga county, 186 miles north of New York, on a level plateau in the valley of the Hudson River.

The medicinal value of High Rock Spring was known to the Indians at an early date, and in 1767 Sir William Johnson, who was carried there by a party of Mohawks, was restored to health by drinking its water. About the year 1815 the first hotels were built.

There are about twenty-eight springs at Saratoga, some of which were bored. All their waters have a common origin, and do not differ in character. Their temperature ranges between 45 and 50 degrees F., and they all contain the same constituents in almost the same order of predominance, differing merely in concentration, which increases with the depth of the strata.

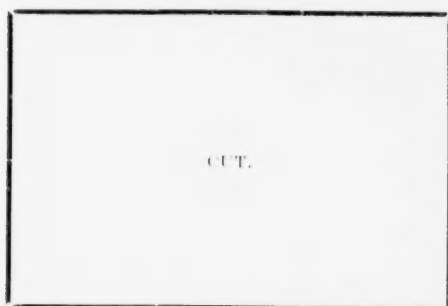
Whatever difference there may be in the physiological action of the different springs must be attributed to the degree of their concentration. The wonderful specific effects claimed to be possessed by each separate spring have their origin mainly in the imagination of their owners. Some of the springs are named after famous European springs, namely: Selters, Vichy, Kissengen; but a glance at their comparative analyses shows the vast difference of composition.

Our Diamond Saratoga Water contains the exact average proportion of each mineral ingredient of fifteen of the principal Saratoga springs, and the above analysis has been adopted by us as the standard for our manufacture. It provides the medical profession with a perfect and true representative of all Saratoga Waters combined.

Its strength is four per cent. stronger than that of Congress, and lies between this and Hathorn. The following named springs have entered into the composition of our Diamond Saratoga water, in equal parts: High Rock, Vichy, Star, Ballston, Geyser, Franklin, Empire, Hathorn, Congress, Selters, United States, Union, Crystal, Conde Dentonian Well, and Pavilion Spring.

Our Diamond Saratoga Water is put up in pint bottles (16 oz.), one dozen in a case, per case, \$1.20

Rebate for case and bottles, 20 cents.



Earthy, Chalybeate, and Bitter-waters.

Earthy Waters.

Waters which contain principally bicarbonate of lime and magnesia, all other ingredients being present in but trifling quantities, are called Earthy Waters.

WILDUNGEN (HELENEQUELLE).

Analysis by Fresenius.

	Parts in 100,000.	Grains in 16 fluid ounces.		Parts in 100,000.	Grains in 16 fluid ounces.
Ammonium chloride, . . .	0.57	0.0416	Magnesium bicarbonate, . . .	136.38	9.9588
Sodium chloride,	103.75	7.5761	Calcium bicarbonate,	126.99	9.2731
Potassium sulphate, . . .	2.78	0.2030	Ferrous bicarbonate,	1.87	0.1365
Sodium sulphate,	1.35	0.0986	Manganese bicarbonate, . . .	0.12	0.0088
Barium sulphate,	0.058	0.0042	Silica,	3.10	0.2264
Sodium bicarbonate,	85.38	6.2347			

Total parts in 100,000, 462.348. Total grains in 16 fluid ounces, 33.7618.

Wildungen (Niederwildungen) is a well-frequented watering resort in Waldeck, a principality in the northwestern part of Germany. There are five springs in Wildungen, of which the Helenequelle is the most important, and hence, most frequented spring. Its water is considered the representative of all Earthy Waters.

Wildungen (Helenequelle) exercises a most excellent effect on the *mucoas membranes of the urinary passages*. It is exceedingly beneficial in the treatment of certain forms of *catarrh of the kidneys*, *catarrh of the bladder*, *stone in the bladder*, and other affections of the urinary organs connected with *difficult or painful voiding* of the water.

It is administered in doses of one to two bottles per day.

Our Wildungen (Helenequelle) is manufactured according to the above analysis.

The water is put up in pint bottles (16 oz.), one dozen in a case, per case, \$1.20

Rebate for case and bottles, 20 cents.

Chalybeate Waters.

The name Chalybeate (from the Greek, Khalyps—Iron) is applied to waters in which the effects of the iron plays the most important part, other ingredients being present in but indifferent quantities.

Iron being found in a great many waters in larger quantities than mere traces, it is evident that the classification of Chalybeate Waters must be somewhat arbitrary.

The most powerful Chalybeate Waters are those which contain the iron in other forms than as a sulphate, free carbonic acid gas in abundant quantities, and but very small amounts of saline matter. The principal representatives among natural Chalybeate Waters are Pyrmont (Neubrünnen) and Schwalbach (Stahlbrunnen) and they are but little used since Artificial Chalybeates have proven themselves much more effective.

*Wagner's Pyrophosphated Iron Water.**Highly Aerated.**Formula of Dr. Negra.*

	Parts in 100,000.	Grains in 16 fluid ounces.
Iron pyrophosphate.....	91.214	6.6607
Sodium pyrophosphate.....	97.571	7.1249
Sodium chloride.....	85.834	6.2678
Total	274.619	20.0534

Pyrophosphated Iron Water was introduced by Dr. Negra as early as 1852, and has been highly appreciated by the medical profession ever since. Its name indicates the furnishing of *two of the system's most essential substances* in a soluble and most easily assimilated form. The astringent and disagreeable taste, so obnoxious in other iron preparations, is entirely overcome, the water having, so to speak, neither taste nor smell. The pyrophosphate of sodium has a most beneficial action upon the nervous system, and the chloride of sodium promotes the assimilation of the iron.

Pyrophosphated Iron Water is pre-eminently *tonic* and peculiarly well fitted to *improve the quality of the blood* when impoverished from any cause. It is most beneficial in diseases characterized by *debility* when the consequences of inordinate discharges, in *chronic anemia or chlorosis, hysteria fluor albus, scrofala, rickets, passive hemorrhage, etc.* It is particularly useful in the *treatment of certain diseases of children.* A renowned German physician has thus given his opinion in the "Year Book of Therapeutics of Diseases of Children," Vol. 8, 1875: "Among all the natural Chalybeate Waters there is, in my opinion, none that is so essentially adapted for use in the practice of diseases of children as the Pyrophosphated Iron Water. It is easily taken by the children, quickly assimilated, acts

neither astringently nor costively, does not irritate, and never changes its composition."

The water being impregnated with carbonic acid gas, its taste is given a sparkling freshness and its digestibility is greatly increased.

A pint of Pyrophosphated Iron Water is equivalent to two grains of Metallic Iron, and the dose for adults is a tumblerful two or three times a day. For children, half the quantity.

Pyrophosphated Iron Water is put up in pint bottles (16 oz.), one dozen in a case, per case..... \$1.20

Rebate for cases and bottles, 20 cents.

Wagner's Pyrophosphated Iron Water.

Arseniated.

<i>Formula of J. Greger.</i>	Parts in 100,000.	Grains in 16 fluid ounces.
Iron pyrophosphate	45.607	3.3304
Sodium pyrophosphate	48.786	3.5624
Sodium chloride	42.917	3.1339
Arsenious acid	0.856	0.0625
Total	138,166	10.0892

In *chronic skin* and other diseases and conditions where a combination of arsenic and iron is indicated, Our Arseniated Pyrophosphated Iron Water has given most excellent results.

The action of arsenic, although beneficial, frequently causes an irritant action upon the stomach, and may possibly exercise its toxic symptoms, but when combined with iron and an alkaline salt, like the pyrophosphate of sodium, it forms an easily digestible preparation, which is borne without any disagreeable symptoms for a long period. The pyrophosphate of sodium, in itself a good solvent, conceals the ferruginous taste and renders the water a pleasant beverage.

The dose for adults is one-third of the contents of a bottle after each meal.

Our Pyrophosphated Iron Water (Arseniated) is put up in pint bottles (16 oz.), one dozen in a case, per case..... \$1.20

Rebate for case and bottles, 20 cents.

Bitter Waters.

The name Bitter Water has been adapted from the German, and is given to those waters which contain large quantities of solid ingredients, composed mainly of alkaline and earthy sulphates; they rarely contain free carbonic acid gas. Their taste is salty, bitter, disagreeable, and often nauseating. Bitter Waters which contain sulphates only, act as strong purgatives, and a prolonged use of them usually disturbs digestion; but if accompanied by chlorides the bad effect, due to the sulphates, is entirely overcome, and their action is

so favorably modified that they should be used with preference whenever the use of Bitter Waters is required.

Bitter Waters containing chlorides are gentle purgatives and diuretics. If taken in large doses before breakfast they purge strongly and produce gentle diuresis; if small doses are administered they purge gently and produce a strong diuretic action; the latter effect is more generally observed by taking the water after breakfast.

Bitter Waters are almost universally used by persons who lead a sedentary life and do not care to give up the pleasures of the table. There are but few people who have not had some disagreeable experience with the imported Bitter Waters, regarding deposits or foul odor.

Carbonated Artificial Bitter Waters are superior to the Imported so-called natural Waters in every respect.

All the inconveniences above mentioned do not accompany the carbonated artificial waters, because the free carbonic acid gas which they contain improves their taste wonderfully, and acts as a tonic to the digestive organs. Their stability and freshness makes them more desirable and beneficial.

The following belong to the class of Bitter Waters. Püllna, Kissingen Bitter and Hunyadi.

PÜLLNA.

Analysis by F. A. Steud.

	Parts in 100,000.	Grains in 16 fluid ounces.		Parts in 100,000.	Grains in 16 fluid ounces.
Sodium chloride,	267.29	19.5182	Magnesium bicarbonate, . .	95.20	6.9517
Potassium sulphate, . . .	62.50	4.5639	Calcium bicarbonate, . . .	50.34	3.6760
Sodium sulphate,	1287.29	94.0011	Sodium phosphate,	0.04	0.0029
Magnesium sulphate, . . .	1516.31	110.7248	Silica,	2.26	0.1672
Total parts in 100,000, 3281.26.		Total grains in 16 fluid ounces, 239.0058.			

Püllna, one of the most renowned of the Bohemian Bitter Waters, contains principally sulphates, and acts as a *strong purgative*. It is especially useful when a *rapid action upon the bowels is required*, and should be taken before breakfast, or when digestion is absolutely completed. Although it may be taken cold, it is often preferable to drink it at a luke-warm temperature, which may easily be obtained by diluting it with a small quantity of hot water.

Püllna is as strong as the Hunyadi Bitter Waters which are of varying composition.

The dose of Püllna is half a pint or less.

It is manufactured by us according to the above analysis.

The water is put up in pint bottles (16 oz.), one dozen in a case, per case \$1.20.

Rebate for case and bottles, 20 cents.

KISSINGEN BITTER WATER.

Analysis by Liebig.

	Parts in 100,000.	Grains in 16 fluid ounces.		Parts in 100,000.	Grains in 16 fluid ounces.
Soluble bromide.....	12.75	0.9310	Magnesium sulphate....	1093.29	79.8348
Lithium chloride.....	1.25	0.0931	Calcium sulphate.....	50.49	3.6869
Sodium chloride.....	1280.12	93.4775	Potassium sulphate....	19.83	1.4480
Ammonium chloride....	9.29	0.0212	Calcium bicarbonate....	91.23	6.6618
Sodium sulphate.....	8.19	0.5981			

Total parts in 100,000, 2557.44. Total grains in 16 fluid ounces, 186.7506

Kissingen Bitter Water is an *aperient, diuretic, and absorbent*. It regulates the *functions of the digestive organs and the circulation of the blood* promoting the *renovation of the organic tissues*.

In cases of considerable accumulation of feces or in congestions toward the head and lungs, when a strong action of the bowels is desirable, large doses should be taken at short intervals, and before breakfast. In *abdominal plethora*, if due to *indiscretion of diet or to sedentary habits, diseases of the heart, or in pregnancy*, a tumblerful in the morning can be continued some time without weakening the system, the action of the intestines is thereby regulated, and the water will, in many cases, be found preferable to Carlsbad.

As a diuretic, Kissingen Bitter Water can be used in certain cases of *dropsy, of pleuritic, and other exudations*. It is also very useful in *scrofula*, especially in *swelling of the cervical glands*, in *tumors of the cellular tissues*, *chronic inflammation of the mucous membranes*, and *eruptions of the skin*.

Our Kissingen Bitter Water is made to conform to the above analysis.

It is put up in pint bottles (16 oz.), one dozen in a case, per case \$1.20

Rebate for case and bottles, 20 cents.

HUNYADI (OFEN BITTER WATER).

Analysis by Fresenius, of Hunyadi Janos Springs.

	Parts in 100,000.	Grains in 16 fluid ounces.		Parts in 100,000.	Grains in 16 fluid ounces.
Sodium chloride.....	142.41	10.3390	Calcium sulphate.....	13.79	1.0069
Potassium sulphate..	13.29	0.9704	Calcium bicarbonate....	125.37	9.1555
Sodium sulphate.....	1966.21	143.5775	Ferrous bicarbonate....	0.28	0.0204
Magnesium sulphate..	1949.42	142.3515	Silica	1.12	0.0817

Total parts in 100,000, 4211.83. Total grains in 16 fluid ounces, 307.5629.

Hunyadi Janos, as well as the large number of other Hunyadi Bitter Waters have (provided they are not manufactured) their origin in the Kehlenfeld, a plain near Ofen, surrounded by the Adlerberge and bounded by the Danube in the east. This plain seems to consist of a bed of marl, eighteen or twenty feet deep, which

contains earthy alkaline sulphates, and is underlaid by an impervious bed of clay. All the wells dug into the marl fill up with bitter-water of varied strength, dependent upon the situation of the well and the atmospheric precipitations on the Adlerberge.

Professor Fresenius, the eminent chemist, in his opinion on Hunyadi Janos, has given a valuable hint when calling attention to the fact that free carbonic acid gas has a most beneficial influence upon the taste of the water.

The effects of Hunyadi Janos do not differ materially from those of other bitter waters, hence we refer our readers to that which has been said under Bitter Waters, and also under Püllna and Kissingen Bitter Water.

The so-called "Natural Hunyadi Janos" in the market is a mixture of the waters of over one hundred different wells, all belonging to the estate of Andreas Saxlehner. We maintain that such a mixture of waters from different wells is not deserving of the title "Natural," and although Hunyadi Janos is mixed in such a way as to possess a uniform density, it varies constantly in its chemical composition.

Wagner's Artificial Hunyadi

is manufactured to conform to the above, the standard analysis by Fresenius of Hunyadi Janos.

Our Hunyadi being highly carbonated is more pleasant to the taste and much easier borne by the stomach than any of the natural waters. It is prescribed and recommended by eminent physicians, with most excellent and satisfactory results.

Our Hunyadi is put up in siphons (32 oz.), six in a case, per case \$.60
In pint bottles (16 oz.), one dozen in a case, per case 1.20
Rebate for case and bottles, 20 cents.



Our Table Waters.

Table Waters.

The term "Table Water" applies to waters which are palatable and healthful to drink, not only at the table, but at any other time.

When speaking of table waters it generally designates those waters

which contain free carbonic acid gas in great abundance. It is the carbonic acid gas which makes them so much more palatable than the ordinary drinking water; besides it stimulates the gustatory nerves, the flow of saliva, the gastric secretions, and thus promotes digestion.

It is also the cause why carbonated waters have such thirst-allaying qualities, and are so easily borne by persons with whom common drinking water produces heaviness in the stomach and dyspepsia.

Only such carbonated waters as are free from bacteria or any vegetable matter, are brilliant in color, free from odor, are light in mineralization, and show a sparkling life, can be considered good table waters.

Table waters should mix well with wines, liquors, or milk, and most of them form excellent vehicles for the administration, and hiding of the disagreeable and nauseous taste, of many medicines.

Wagner's Selters, Vichy, Lithia, Imperial Mineral, Carbonic or Club Soda, are Most Excellent Table Waters.

They all possess the above mentioned qualities. They are prescribed and recommended by our leading physicians, and those people who have learned to value them for general drinking purposes, would not consider a meal complete without them.

The analysis of our Selters, Vichy, and Lithia will be found on preceding pages.

WAGNER'S IMPERIAL MINERAL WATERS.

Analysis.

	Parts in 100,000.	Grains in 16 fluid ounces.		Parts in 100,000.	Grains in 16 fluid ounces.
Potassium sulphate....	3.231	0.236	Calcium fluoride.....	0.0144	0.0010
Potassium chloride....	2.914	0.213	Barium bicarbonate....	0.1912	0.0139
Sodium bicarbonate....	70.862	5.174	Strontium bicarbonate..	0.2006	0.0146
Sodium phosphate....	0.0344	0.0025	Magnesium bicarbonate.	24.802	1.8111
Sodium chloride....	140.723	10.276	Alumina.....	0.0106	0.0008
Calcium bicarbonate....	21.011	1.600	Silica	2.458	0.1795

Total parts in 100,000, 267.3512 Total grains in 16 fluid ounces, 19.5224.

Our Imperial Mineral Water is unquestionably superior to any of the so-called imported natural table waters, which are all more or less artificially prepared (see page 27 on this subject).

It is an absolute fact that a purer or more palatable table water cannot be produced. It contains just enough mineral ingredients to increase the digestive powers, to soothe the most irritable stomach, and assuage the gnawing thirst incident to high summer heat.

Our Imperial Mineral Water is put up as follows:

In quart bottles (24 oz.), one dozen in a box, per box.....	\$1 35
Rebate for box and bottles, 50 cents.	
In quart bottles, 50 bottles in a case, per case.....	5 00
Rebate for case and bottles, \$1.50.	
In pint bottles (12 oz.), per dozen.....	75
Rebate for bottles, per doz., 15 cents.	
In splits (6 oz.) per doz.....	60
Rebate for bottles, per doz., 15 cents.	

Wagner's Carbonic Acid Water.

Known also under the names of Carbonic or Club Soda.

This is nothing but our Diamond Distilled Water, strongly impregnated with an excess of pure carbonic acid gas. It is a splendid water, with all the pleasing, cooling, and exhilarating effects of the gas. It is elegant to mix with strong liquors, or to drink as soda water, when mixed with fruit or other syrups.

Carbonic and Club Soda is put up in siphons (37 oz.), six in a case, per case 60
 In egg-shaped bottles, per dozen..... 75
 Rebate for bottles, 15 cents per dozen.

Wagner's Diamond Distilled Water, Aerated.

This is an absolutely pure water, free from all organic matter or any mineral ingredient whatsoever, impregnated with sterilized and purified atmospheric air.

Distillation is the only means by which water can be rendered absolutely pure and sterile; but, by that process, the taste of the water becomes flat, lifeless, and objectionable, being deprived of everything but the H_2O .

By our system of impregnating the water after distillation with purified atmospheric air, all the objectionable features are removed, the water is rendered wholesome and delicious in taste.

As all bottles used by us are cleansed with the utmost care, rinsed with distilled water, and steril-

Our Distilling Room.

ized before filling, our Aerated Diamond Distilled Water never changes nor deteriorates in any season or any climate if kept properly corked. The extremely low price at which we deliver our Distilled Water into the houses of the public leaves no excuse for drinking impure water, thereby endangering life.

Our Diamond Distilled Water, Aerated, is put up in half-gallon bottles, six bottles in a case, per case..... \$ 30
 In five-gallon crates, per crate..... 1 75
 Rebate for empty crate, \$1.25.

A deposit of \$4.15 for each case of six half-gallon bottles will be charged, which will be returned when empty and in good condition.

We take the liberty of quoting a few authorities upon the subject of drinking water in general, and the importance of a reliable and

palatable Distilled Water, such as our Diamond Distilled Water, for drinking purposes.

"For drinking and other dietetic purposes every community, in fact every household, should have a sterile water. A sterile drinking water cannot be found in nature (hot springs and geysers not being regarded as sources of drinking water), the use of which will avoid the introduction into the human system of the germs of disease, and especially of typhoid fever." * * *

"Tests of Pasteur filters in such condition as they are found in hotels and restaurants have given from 180 to 1500 bacteria per C. C., and the low counts of two to four bacteria per C. C. have been obtained from tubes not previously used."—*Bacteria and Other Organisms in Water*, by John W. Hill, M. Am. Soc. C. E.

"The daily use of distilled water is, after middle life, one of the most important means of preventing secretions and the derangement of health."—Dr. W. Kinnear in the *London Humanitarian*.

"Out of every 100 cases of typhoid fever 99 come from infected water."—Dr. Cyrus Edson, Commissioner of Health, New York, in the New York "*Tribune*," Dec. 10, 1894.

"The diseases in which the death rate of Lawrence, Mass., especially exceeds that of other cities are typhoid fever and other diarrhoeal diseases, both of which are regarded as especially dependent upon the water used for drinking."—"Typhoid Fever in its Relations to Water Supply," by Mr. Hiram F. Mills, 1891.

Here we again find confirmed the well-known axiom on the application of mineral waters in therapeutics, that a remedy prepared and administered in the form of a carbonated mineral water produces an effect three or four times stronger than when given in the form of pills and otherwise.—Dr. J. Rosenthal, Professor at the University of Koenigsberg, *Berliner Wochenschrift*, vol. xxv., p. 668.

We are satisfied that artificial mineral waters are as efficacious as, and at times more efficacious than, the natural waters, when the patient will take them in the same manner.—Trousseau and Pidoux, on Therapeutics; quoted by Dunglison, in his Therapeutics and Materia Medica.

I have learned to prefer the artificial compound made by the chemist's ingenuity to imitate the natural water when the springs are at their best. As the natural waters are brought from afar by the cargo and carload, there is danger of their becoming so stale and altered before use as to be wholly unreliable.—Wm. T. Cathell, A. M., M. D., Baltimore, Md.

Our Diamond Distilled Water (Aerated) is used in the houses of our leading physicians, in our hospitals, and was used exclusively in the hospitals at Ft. Thomas during the late war. Nothing speaks louder than these facts, which show that the medical profession endorse what we say about our waters.

Wagner's C. P. Diamond Distilled Water.

CUT.

A Glimpse of Our Bottle-Washing and
Sterilizing Department.

For Druggists' and Chem-
ists' Use.

This water is the same
as the former, "minus the
air."

It is guaranteed to meet
every and all the exacting
requirements of the United
States Pharmacopœia. For
the use of druggists, chem-
ists, and at the operating

table of the surgeon, this water has no equal.

The water is put up in half-gallon bottles, porcelain tops.

In half-gallon bottles, six in a case, per case \$.30

A deposit for box and bottles is required, the same as for our
Aerated Water.

Comparative Table

Showing the Total Mineral Ingredients in 100,000 Parts, and Grains
in 16 Fluid Ounces of Wagner's Artificial Mineral Waters.

Alkaline Waters.

	Parts in 100,000.	Grains in 16 fluid ounces.
Vichy (Grand Grille)	700.58	51.1580
Aqua Alcalina (Fortior)	1250.00	91.277
Aqua Alcalina (Mitior)	800.00	58.417

Muriated Alkaline Waters.

Selters	427.46	31.21427
Ems (Kränchen)	351.89	25.6959

Alkaline Saline Water.

Carlsbad (Sprudel)	629.282	45.9517
Double Carlsbad	1258.564	91.9034
Quadruple Carlsbad	2517.128	183.8068

Muriated Waters.

Kissingen (Pandur)	848.66	61.9713
Diamond Saratoga	1179.83	86.1541

Earthy Waters.

Wildungen (Helenenquelle)	462.34	32.7618
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Chalybeate Waters.

Pyrophosphated Iron Water	274.62	20.0534
Contains Pyrophosphate of Iron.....	91.21	6.6607
Pyrophosphated Iron Water, arseniated....	138.16	10.0892
Contains Pyrophosphate of Iron.....	45.60	3.3304
Contains Arsenious Acid	0.85	0.0625

Bitter Waters.

Kissingen Bitter Water	2557.54	186.7506
Püllna	3281.26	239.6058
Wagner's Hunyadi (Ofen Bitter Water)...	4211.89	307.5629

Lithia Waters.

Wagner's Diamond Lithia Water.....	426.89	31.1725
Contains Lithium bicarbonate	146.08	10.6671
Wagner's Diamond Vichy with Lithia....	751.23	54.8566
Contains Lithium bicarbonate	50.65	3.6987
Wagner's Carlsbad with Lithia.....	702.322	51.2852
Contains Lithium bicarbonate	73.04	5.3335
Wagner's Quadruple Carlsbad with Lithium benzoate	2595.25	189.5118
Contains Lithium benzoate	78.12	5.7049
Wagner's Quadruple Carlsbad with Lithium benzoate and Sodium salicylate....	3298.36	240.8544
Contains Lithium benzoate	260.41	19.0159
Contains Sodium salicylate	520.82	38.0316
Wagner's Imperial Mineral Water.....	267.35	19.5224

Wagner's Piperazine Water.

Each bottle (24 oz.) contains 1 gramme=15.4324 grs. Piperazine (Scherings).

A Few of the Many Testimonials We Have Received Regarding Our Waters.

CINCINNATI, O., August 15, 1898.

Messrs. W. T. Wagner's Sons, City.

GENTLEMEN: Replying to your inquiry, it gives me great pleasure to once more assure you of my high appreciation of your Lithia Water. I have employed it extensively in cases where this drug was indicated, and always with the desired results.

My patients have found it more acceptable, and I have observed more prompt efficiency than from any other form of Lithia administration.

Very truly,

JAS. G. HYNDMAN, M. D.

CINCINNATI, O., September 14, 1898.

Messrs. W. T. Wagner's Sons, City.

GENTLEMEN: It gives me great pleasure to state that your Artificial Mineral Waters have given me very satisfactory results; in-

deed, I have found them very desirable, and certainly more efficacious than the so-called imported mineral waters.

I look upon the composition of your Lithia Water as excellent. It has a delightful and refreshing taste, and contains more Lithia than most of them in the market; and in all cases in which I have prescribed it, proved itself a reliable uric-acid solvent.

As to your Aerated-Distilled Water, permit me to say that, in my opinion, it constitutes a pure and refreshing drink for the sick, and I frequently recommend it to be used in the homes of my patrons and friends.

Very sincerely yours,

DR. E. GUSTAV ZINKE.

CINCINNATI, O., *October 6, 1898.*

Messrs. W. T. Wagner's Sons, City.

GENTLEMEN: It is with the utmost confidence that I recommend your Artificial Mineral and Distilled Waters in my practice.

The knowledge that the manufacture of your waters is the hands and under the constant inspection of an expert chemist gives me the assurance that whether they are used at the bed-side of the sick or on the table as a beverage, purity is guaranteed. To the physician prescribing them for medicinal purposes, it is of great importance to have the absolute surety that these waters are what they are claimed to be.

I consider true Artificial Mineral Waters, prepared on scientific principles and with the care and exactness as I know yours are, far more desirable than any of the natural waters, which never show the life and sparkle of the former, and whose qualities seem to have deteriorated through age and bottling.

The results which I have obtained with those of your waters which I am in the habit of prescribing have been most satisfactory.

Very truly yours,

DR. A. SCHWAGMEYER.

CINCINNATI, O., *June 5, 1897.*

Messrs. W. T. Wagner's Sons, City.

GENTLEMEN. Undersigned highly recommends your Lithia Water, containing more Lithia than any other mineral water in the market, having had excellent results from its use in renal diseases, especially removal of renal calculi.

Very respectfully,

OTTO W. FENNEL, M. D.

CINCINNATI, O., *September 21, 1898.*

Messrs. W. T. Wagner's Sons, City.

GENTLEMEN. I am glad to testify to you and to the public my appreciation of and confidence in your waters. I have thoroughly and critically inspected your factory, and am free to say that according to my judgment no better and more proper results can be obtained in the manufacture of pure waters.

I use your Diamond Distilled Water, as well as some others, in my family, and recommend them exclusively in my practice with most satisfactory results, and will specially mention your Lithia Water as being more active and efficacious than any which I have tried.

Very respectfully yours,

L. S. COLTER, M. D.

CINCINNATI, O., *January 16, 1898.*

Messrs. W. T. Wagner's Sons, City.

GENTLEMEN: After suffering with chronic cystitis four years, and failing to gain relief from every available means, I finally decided to test the virtue of your celebrated Lithia Water.

It has been three months since I began its use, and it affords me pleasure to report favorably, the result being most gratifying.

I shall have no hesitancy in prescribing it to my patients when suffering with disease of the genito-urinary organs.

Respectfully,

F. W. SCHOEEMER, M. D.

CINCINNATI, O., *November 11, 1898.*

Messrs. W. T. Wagner's Sons, City.

GENTLEMEN: I take an unusual satisfaction in saying a word of commendation regarding your Lithia Water.

I have been a continuous sufferer with chronic cystitis the last five years, affecting the entire urinal organs. This condition at times has been of such a nature as to confine me to my bed for weeks at a time. Through the advice of friends of like suffering who used and were benefited by your Lithia Water, I was induced to give the same a trial, and am highly elated with the result it produced in my case. I am a well and healthy man to-day, and words will hardly express my gratitude.

To avoid a return of my ailment I am a steady consumer of your Lithia Water, as you know, and I will say to you that any information regarding my case will be extended with the greatest of pleasure to any one who may desire it.

Sincerely yours,

DAVID R. HUNT,

*Home Office Special, Union Central Life Ins. Co.*CINCINNATI, O., *January 14, 1898.*

Messrs. W. T. Wagner's Sons, City.

GENTLEMEN: Some eighteen months since, on your recommendation, I ordered a dozen bottles of your Quadruple Carlsbad with Lithia and Soda, intending to have my wife use it as a remedy for rheumatism. She had been troubled and annoyed for a year and a half to two years with rheumatic pains, and just at that time the pain had become so bad that it was with difficulty she made her own toilet or combed her hair. She used eleven bottles of the water, and, although it is now over a year past, she is entirely free from her trouble, and I take great pleasure in recommending this water to any rheumatic sufferer.

I have taken pains to recommend it personally, and you are at liberty to use this testimonial, if it will be of any benefit to you.

I am with best wishes, yours very sincerely,

W. HOWARD OGBORN

Dr. Eph. M. Epstein writes in the "Alkaloidal Clinic," September, 1897:

"A few months ago I had the opportunity of spending some hours in the superb, grand establishment of W. T. Wagner's Sons, manu-

facturers of Artificial Mineral Waters. I was astonished to see there the scrupulous aseptic precautions in every tank and vessel. No wooden receptacles are to be seen there, all being of copper, heavily tinned, and the cleanliness everywhere there equals that of a first-class chemico-pharmaceutical laboratory. The chemical department is under the careful supervision of a thoroughly scientific and practical chemist and pharmacist." * * *

List of Cincinnati Physicians Who Have Used and Who Recommend Our Waters.

Dr. Chas. N. Abbott.	Dr. Wm. E. De Courcy.	Dr. Wm. F. Herberth.
" Geo. H. Albers.	" Wm. H. De Witt.	" Geo. F. Hermann.
" Henry W. Albers.	" O. M. Denman.	" R. C. Hill.
" G. M. Allen.	" H. P. Dickmeier.	" C. R. Holmes.
" M. L. Amick.	" Chas. W. Dodd.	" Oliver P. Holt.
" S. C. Ayers.	" Clif. L. Donnell.	" Herman H. Hoppe.
" Theo. Bange.	" F. P. Dorschug.	" Jas. G. Hyndman.
" Fred. Bacharach.	" Wm. H. Dunham.	" Rob't Ingram.
" W. W. Barber.	" Geo. J. Eger.	" Ernst Jacob.
" Edwin D. Bateman.	" Julius Eichberg.	" Wm. Judkins.
" Arthur C. Bauer.	" Chas. Seth Evans.	" A. F. Juettner.
" Emil W. Bayer.	" Geo. A. Fackler.	" Otto Juettner.
" M. Beatty.	" Geo. W. Fels.	" Geo. Kassen.
" H. W. Bettmann.	" H. W. Fetter.	" Henry Kattenhorn.
" John Boldander.	" O. W. Fennel.	" P. A. Keck.
" J. E. Boylan.	" C. G. Foertmeyer.	" Edwin Khuon.
" Chas. Bruckner.	" C. H. Foertmeyer.	" Jos. Kindel.
" H. A. Buchanan.	" Fred. Forchheimer.	" Chas. F. Klayer.
" Henry Buschmann.	" Walter Forch-	" Max Koehler.
" Fred. H. Buser.	heimer.	" F. E. Kugler.
" J. C. Buttenmiller.	" C. J. Fredricks.	" S. P. Kramer.
" Chas. E. Caldwell.	" H. Freudenberger.	" J. C. Krieger, Jr.
" J. S. Caldwell.	" Chas. D. Gaylor.	" L. J. Krouse.
" Otis L. Cameron.	" Otto P. Geier.	" J. W. Lake.
" Julia W. Carpenter.	" Wm. A. Geohegan.	" F. W. Langdon.
" L. C. Carr.	" Bertha L. Glaeser.	" J. C. Ludwig.
" M. Cassat.	" Peter W. Good.	" W. A. McVean.
" Chas. H. Castle.	" J. E. Greiwe.	" J. C. Mackenzie.
" J. L. Cilley.	" Adolph Grimm.	" J. C. Marcus.
" B. F. Clark.	" H. H. Groth.	" F. O. Marsh.
" John L. Cleveland.	" J. B. Grothaus.	" B. J. Mayer.
" L. S. Colter.	" J. A. Haerr.	" A. J. Miles.
" P. S. Conner.	" B. G. Harfl.	" B. F. Miller.
" Samuel W. Craig.	" Thos. W. Hays.	" Thos. C. Minor.
" Wm. H. Crane.	" R. C. Hellebower.	" E. W. Mitchell.
" J. M. Crawford.	" Edwin Heinemann.	" Giles S. Mitchell.
" Leo Danziger.	" O. N. Heise.	" Irvine K. Mott.
" John Darragh.	" A. B. Heyl.	" Chas. S. Muscroft.
" Clark W. Davis.	" H. F. Held.	" Sam'l Nickles.
" John B. Davis.	" Emil V. Helfferich.	" O. D. Norton.
	" F. F. Hellmann.	

Dr. John C. Otis.	Dr. Louis Schwab.	Dr. J. Trush.
" C. D. Palmer.	" A. Schwagmeyer.	" S. B. Tuthill.
" C. A. Pauly.	" W. W. Seely.	" Geo. B. Twitchell.
" C. D. Pearce.	" John M. Shaller.	" C. B. Van Meter.
" A. C. Pfau.	" Ed. H. Shields.	" A. R. Walker.
" L. A. Querner.	" Theo. Sittel.	" E. W. Walker.
" B. K. Rachford.	" Henry Snow.	" C. C. Ward.
" Jos. Ransohoff.	" C. G. E. Speidel.	" D. E. Weatherhead.
" Bernhard J. Ratter-	" S. H. Spencer.	" W. B. Weaver.
terman.	" C. A. Stammel.	" H. C. Wendel.
" Frank L. Ratter-	" O. W. Stark.	" Wm. H. Wenning.
mann.	" Sigmar Stark.	" G. C. Werner.
" A. Ravogli.	" Rob't W. Stewart.	" H. J. Whitacre.
" Thad. A. Reamy.	" E. O. Strachley.	" Jas. T. Whittaker.
" Chas. A. L. Reed.	" Louis Stricker.	" Henry H. Wiggers.
" John J. Reed.	" G. F. Sudhoff.	" Rob't G. Wiggers.
" A. P. Renneker.	" C. W. Tangeman.	" Martha R. William.
" C. H. C. Richard.	" N. T. Tanski.	" John M. Withrow.
" B. Sanfeld.	" B. Tauber.	" T. W. Wittkamp.
" Eric E. Sattler.	" H. J. Taylor.	" Chas. F. Woche.
" Rob't Sattler.	" J. H. Thesing.	" D. L. Wolfstein.
" W. E. Schenck.	" Max Thorner.	" W. R. Woodward.
" T. W. Schmidt.	" A. B. Thrasher.	" S. Annie Yates.
" Val. Schneider.	" G. H. Thuman.	" E. G. Zinke.
" F. W. Schoemer.	" Jos. M. Topmoeller.	" A. Zipperlen.
" P. E. Schorr.		
" E. Schwab.		



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Ready to Serve You.

PREFERABLE

More

**More Palatable
More**

THE NATURAL

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ible
re Effective

Complainant's Exhibit.
"Defendants' Street Car Advertisement."
Filed November 21, 1905.

Write for
Catalogue



SUPERIOR TO THE NATURAL.

An Essay

ON THE

Reduction of Obesity.

A Reliable and Harmless Way to Diminish
and Cure Over-Fatness.

. . BY .

WM. T. CATHELL, A. M., M. D.,

BALTIMORE.

Read at the Ninety-ninth Annual Meeting of the Medical and
Chirurgical Faculty of the State of Maryland.

[Reprinted from Maryland Medical Journal.]

W. T. WAGNER'S SONS,
CINCINNATI.


WAGNER'S

Artificial Mineral Waters



THE ONLY CORRECTLY MADE WATERS
IN CINCINNATI TO-DAY.



 OUR WATERS are such, not only by name or label, but are actual reproductions of the natural springs, compounded and prepared by reliable chemists to conform to their respective analyses. They possess great advantages over natural waters, because they are always uniform in strength, always fresh and absolutely free from all organic matter, etc., etc.

Correspondence Solicited by

W. T. WAGNER'S SONS,

1920-26 Race Street,

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Cincinnati, Ohio

Telephone Main 1602.

ESSAY

ON

A Reliable and Harmless Way to Diminish and Cure Over-Fatness.*

BY WILLIAM T. CATHELL, A. M., M. D., OF BALTIMORE.

[READ AT THE NINETY-NINTH ANNUAL MEETING OF THE MEDICAL AND CHIRURGICAL FACULTY OF THE STATE OF MARYLAND.]

MR. CHAIRMAN AND GENTLEMEN:

Before all else, I shall state that I have neither medicine to sell, secret to extol, nor scheme to make money out of the public, as "Eureka" titles like this are apt to suggest, but, agreeing that every addition to true knowledge is an addition to human power, I intend to lay before you to-day the results of nearly five years' observation upon a reliable and harmless way to remove over-fatness and the evils it creates.

That you may have a clearer conception of what is to follow, I shall first remind you that, by the natural law of proportion, fat should constitute about the one-fifteenth or one-twentieth of one's weight and that a person's heft may vary ten or fifteen pounds either way, from the standard of weight to height, without its being significant of either discomfort or disease; also, that a certain quantity of fat is a blessing, as it not only improves personal appearance, but is necessary to protect the various organs and to maintain their temperature; and also, to serve as nutrition in time of need. For these purposes it is stored in cells in various parts of the body, but more plentifully in some regions than in others.

If anyone has a much less proportion than one-twentieth: leanness, lankiness, or emaciation is observable; a very much greater proportion than say one-ninth or one-sixth, constitutes corpulence, obesity, or over-fatness, and although stoutness, to a moderate degree, is considered an element of good health and indicative of the successful working of one's physiology, yet, fatness alone is a very poor criterion of health, but, on the contrary, it is an element that possesses the power for serious mischief, because a very great amount of fat necessarily creates heaviness, impedes respiration, circulation, locomotion, digestion, and other vital functions, to such a degree that the person who carries such a load of bulky ballast is more burdened than blessed.

In very fat persons, all the cellulo-adipose structures are filled to distension, more noticeably about the subcutaneous tissues, the breast and the abdominal walls; also, in the omentum and mesentery; on the surface of the heart, and about the kidneys; and if this morbid accumulation grows to be excessive, these all become buried in fat, which mechanically interferes with both function and nutrition.

*Reprinted from *Maryland Medical Journal*, Ninth Edition.

According to my observations, there are four common causes of over-fatness:

Congenitally small lungs with defective oxygenating capacity;

Eating excessively of all kinds of food;

Want of lung-expanding exercise;

Alcoholics to excess.

There are numerous well-known agents that more or less effectually reduce surplus fat, and also counteract its return. Among these Iodine, Bromine, Mercury, Lead, Arsenic, Liquor Potassium, Lemon Juice, Sour Wines, Vinegar, purgatives, sweating, semi-starving, baths of various kinds, smoking and chewing, fish diet, Bladder Wrack, Phytolacca, Gulf Weed, and various quack nostrums, each have more or less reputation for diminishing weight.

Some of these, when taken sparingly or for a brief while, have a proper place and a useful power, but unfortunately, when used in quantities sufficiently strong, and long enough continued, to destroy any considerable amount of fatty tissue, they likewise injure other structures, and, therefore, are necessarily dangerous to health. Besides, they all act either by saponifying the fat or by producing numerical cell-atrophy, either of which exerts powerful influence on the lymphatic and absorbent systems, and not only cause reabsorption and destruction of olein, stearin, margarin, protoplasm, nuclei and other physiological constituents of the fat-cells, but go further, and annihilate myriads of cell-membranes, red blood globules and other normal and essential elements of the economy; and as these perish, all histologists know, vitality is reduced and health is impaired.

It is also well known that, while affecting the fat, many of these articles also act as slow poisons, and damage or ruin the alimentary mucous membranes and the functions of digestion, and thus cause mal-assimilation and mal-nutrition, with repugnance to food. These, therefore, are all doubly injurious; and if used too heroically, or continued beyond a certain period, anemia, general debility, marasmus, consumption, or other fatal affections may be induced.

None but an idiot, however fat, wishes to endanger his health by unwise efforts to reduce it, and many over-weighted persons, anxious to throw off their fleshy burden, and aware of the danger of using anti-fat drugs, determinedly avoid them, and resort to pedestrianism, bicycling, gymnastics, rowing, massage, electricity, restricted sleep, thyroid extract, skimmed milk, and other popular means; while a few begin a regular dietary system: Banting's, Ortel's, Ebstein's, Bruen's, or others, which all aim to limit the supply of elements that form fat, and to increase its re-absorption; and I am glad to say, to the honor of their founders, that every dietary system with which I am acquainted seems to be based on rational principles.

But, ball-and-chain rules, and iron-clad regulations requiring daily discomfort, long suffering, semi-starvation, abstemious dieting, etc., no difference by whom recommended, are rarely persevered in to a successful degree by persons with simple over-fatness, and we rarely meet anyone wreathed in fat, who has not begun on one or another, or several different plans, and after awhile become either careless or disgusted, and—quit.

Neither with cases of enormous obesity, nor with celebrities of fabulous proportions, nor with over-fat invalids or semi-invalids have I had any special experience, but if any healthy person, whether male or female, weighing less than 300 pounds, with *simple uncomplicated over-fatness*, wishing to make a fair, honest, and faithful trial of my plan to diminish over-fatness, will begin and drink a large glass of Kissingen Water, kept at all drug-stores and other soda water fountains, twenty or thirty minutes after each of the three daily meals, one day, and a similar glass of Vichy Water, after each of the three daily meals the next day, and per-

sistently continue to take them thus, week after week, he will begin and gradually lose fat, until he comes down to medium weight and stoutness, and be correspondingly relieved of the discomforts and the dangers of obesity; after which their use should be discontinued.

The natural Kissingen and Vichy waters, when fresh, answer our purpose equally well, but I have learned to prefer the Artificial Compound made by the chemist's ingenuity to imitate the natural waters when the springs (Rakoczy and Grande Grille) are at their best, because, to be successful, both waters should be used while still fresh, and as the natural waters are brought from afar, by the cargo and carload, there is danger of their becoming so stale and altered before use as to be wholly unreliable, and in actual practice I have found the artificial waters, made from the Kissingen and Vichy powders by mineral water men everywhere, to be equally or even more definite in quality than the natural waters, therefore more certain in their action on fat.

Kissingen and Vichy are both cheap waters, and may be taken at the counter or produced by the dozen in citrate of magnesia or ginger ale bottles, or in syphons, or even in five or six gallon tanks to use at home.

Kissingen and Vichy Salts, taken in ordinary water, are said to reduce fatness, but in a lesser degree, owing probably to the absence of carbonic and other gases; with them, given this way, I have had no experience.

It is useless to take either Kissingen or Vichy alone, as they act only when both are taken, and taken alternately. The temperature at which they are used is immaterial.

While using the Kissingen and Vichy, the person should, as a necessary guide, keep tally on his girth and weight; by taking his measures, and by carefully weighing his body in the same clothes, and on the same accurate scales, every two or three weeks, and if he has lost more than a couple of pounds for each week, take a smaller glass of each, at every drink, and if he has lost less than a couple of pounds for each week, *squeeze a few teaspoonfuls of lemon juice into each glass of the Kissingen, to increase its acidity, and also add one teaspoonful of the Aromatic Spirits of Ammonia to each glass of the Vichy, to increase its alkalinity.* He can further aid them by using acidulous food and drink on the Kissingen days, avoiding them with the Vichy.

He should also lend assistance to the action of the waters, not by a too restricted diet, which is not good even for the obese, but by using starches, sugars, fats, alcoholics, and all other fat-forming food, but sparingly; avoid over-eating, and use neither food nor alcoholics except at the regular meals; also, take early and light suppers, so that from that time until breakfast, the longest of the three intervals between meals, there may be but little pabulum for fattening, and favorable conditions for reduction; and especially that there may be complete emptiness of the stomach during sleep, so that nature may then utilize some of his surplus fat as fuel for the ceaseless wear and tear. He should also take moderate out-door exercise, on foot or wheel, or in any other way that will increase or deepen his respiration and promote tissue oxidation.

After drinking these waters and following these rules for awhile, he will find that he is losing part of his girth and a couple of pounds airdupois every week, and that the loss consists entirely of useless fat; and that his appearance, activity, and feelings will be improved—just as if there exists some natural antagonism between these waters, taken thus, and adipose tissue, more especially that located in the great fat-centres already mentioned.

Now, while it is extremely difficult to search out the ultimate of anything in physiology—for instance, why opium relieves pain, and colchicum benefits gout—

yet, after studying this subject thoughtfully, I am quite sure there exists either a specific physiological action or some definite chemical affinity between Kissingen and Vichy, taken by this rule, and abnormally-fat human tissues, that results in a lessening of the fat, with neither purging nor sweating, or injury to brain, blood, muscle, or general health; but how, or why, I can not yet explain.

They may reduce adipose, and prevent further infiltration or storage, in either of several ways: One is by merely inhibiting or controlling the disproportionate activity of fat-cell nutrition; thus placing less fatty pabulum and more blood, brain, muscle, nerve, and gland elements, at the disposal of the absorbents, while the fatty tissue and oily material of the body, being the most lowly organized, are naturally the first to be removed by the corrected physiological processes.

Or we may find that they act as alteratives, and restore equilibrium to the nutritive processes, by destroying or neutralizing some morbid fat-forming agency, occult derangement of digestion, or perversion of assimilation, that have been causing diminished oxidation, and a consequent accumulation of fat.

Again, when we study their analysis, and consider the complexness of the potent medicinal ingredients that lie hidden in each glass of these waters, another rational hypothesis arises: Kissingen being an acidulous *saline*, and Vichy an *alkaline*, and both containing salts of calcium, magnesium, potassium, sodium, and other minerals, in decided and definite quantities, united with carbonic acid and other gases, it seems logical to suppose that when *alternately* mingled with the food pulp or chyme in the stomach and intestines day after day, their special combination of ingredients brings about reduction by some chemico-physiological readjustment of the alkalinity and acidity of the blood and the visceral fluids, or possibly of both humors and solids; and that this readjustment makes the fat-yielding pabulum less plentiful and less rich, therefore less favorable for fat creation, and metabolically explains why increase of fatness ceases, and why reabsorption of the surplus contents of the fat-cells begins, and also, why this physiological reduction and reconstruction results, all uniting to prove that Kissingen and Vichy, taken by this plan, are a reliable combination for preventing increase and reducing surplus fat to the normal proportion of one to fifteen or twenty.

But, whatever their exact mode of action may be, there certainly exists some natural and well marked antagonism between these two waters taken thus, and adipose material, that tends to restore a normal balance between the quantity of it and other tissues. This has been proven again and again. In some cases, however, the direct and immediate effect of Kissingen and Vichy is more perceptible than in others, because some types of fatness reduce more easily and more rapidly than others. The more firm and solid the flesh, and the longer one has been fat, the more slowly it yields. Such a one, if quite fat and belonging to a constitutionally fat family, with proportionately small lungs, might require a persistence with Kissingen and Vichy methodically for six months or even longer; unless the ammonia and lemon juice are added regularly. Ungovernable appetite, failure to exercise, tipping, etc., may also retard or prevent success.

In some of these "stubborn" cases, a considerable decrease of size, with but little lessening of weight has been observed.

In addition, Kissingen and Vichy not only reduce over-fatness, but also tend to permanently correct the irregular and excessive fat-making activity on which it depends, without injury to health. The person gradually becomes thinner, looks healthier and feels younger and more active, as his (or her) superabundance disappears. At the same time, the skin being an elastic and active tissue, contracts correspondingly, leaving neither flabbiness nor wrinkles, bagginess nor crow's feet, while brain, muscle, nerve, blood and glandular nutrition and strength, all remain

normal, proving that this method does not cause either pathological diminution or morbid shriveling from inanition or loss of strength; or constipation with cachexy, from impaired digestion, as the various "Anti-fat" blood depuratives and glandular eliminatives are notoriously apt to do.

To properly appreciate this fact it must be remembered that a person in normal flesh has as much blood, and usually better blood, than a similar person whose weight has been ever so much increased by fat, and that Kissingen and Vichy act on the fat and not on either the blood, the glands, or the bowels.

My attention was first called to the peculiar power of this combination over fat fully five years ago, in this way: Mr. McK—, a hearty-looking, middle-aged gentleman, who was consulting me for an unimportant affection of the throat, informed me that in addition to this, he had lost about thirty pounds of flesh within the last half year, without sickness, loss of appetite, or any other apparent reason, and that he was mystified and unable to discover the cause.

On inquiry I gleaned nothing important, except that for several months he had been following the habit of drinking Artificial Kissingen and Vichy Waters daily, under the belief, that being called for so often by soda water patrons, they must be good for one's health.

His throat being better, he soon passed from my care, with his loss-of-weight mystery unsolved.

The following year, Mr. J. H. H—, a young man of thin visage and notable leanness in general, asked me the cause of his losing nearly nine pounds in weight. Among other things, I learned that for a year or more he and a companion had been daily visitors to a near by soda water fountain, and tiring of the various syrups, they had changed, five or six months before, to Kissingen and Vichy, and that shortly thereafter they both noticed that they were getting thinner and thinner.

Remembering Mr. McK—'s decrease, and putting this case and that together, I told him of the resemblance, and caused him to discontinue Kissingen and Vichy immediately. Emaciation shortly ceased, and under tissue-building tonics, he gradually regained what had been abstracted from his scanty stock of fat.

Feeling quite sure that I now had a clue to the mystery, I sought out Mr. McK— to tell him, but suspecting the waters himself, he had long since quit them, and his loss of weight had ceased, making him quite sure as to the cause.

A few months after this, friend McK—called at my office with a young Canadian, Mr. W. D. W—, a bar-tender, whom he had incidentally met, and wished me also to see. His weight, under the liberal use of Kissingen and Vichy, had fallen, during the past summer and fall, from 223 to 180 pounds. He explained to me that, being a bar-tender, he was kept in constant contact with liquor drinking, and, being pledged against all intoxicants, yet, not wishing to offend customers, he would take a dozen or more small shell glasses of either Kissingen or Vichy daily, drinking whichever they had most of in stock.

He further informed me that his decrease in weight, and a striking rejuvenescence in his appearance, activity, and feelings, began shortly after commencing this habit. His lessening in weight had also ceased promptly after Mr. McK— had caused him to quit them.

This was more than three years ago. His size still remains at comfortable stoutness, and his weight keeps below 200 pounds.

Anxious to utilize this discovery, and determined to neglect nothing in pursuit of the truth, Kissingen and Vichy have since been experimented with by me, and by others, on different fat-laden persons at various hours and in varying quantities, and as the result, I would recommend their use in the quantities and at the hours

already mentioned, since these, in my opinion, constitute the most effective time and quantity.

At a recent interview, Mr. W. D. W—, the bar-tender, told me that constantly fearing his superabundant fat may again force him above ordinary stoutness, he has adopted the habit of drinking a few glasses of Kissingen and Vichy daily, for ten or fifteen days, several times a year.

Governed by this and other cases, I would advise those with the smaller degree of over-fatness, who wish to effect a slight and gradual reduction of size; and also, those merely seeking to reduce unsightly chin, facial, bust, hip, or abdominal fat, or to keep their general bulk down to the natural, to drink Kissingen and Vichy now and then, instead of adhering rigidly to the regular system.

When the excess is chiefly below the waist, causing what is called "large stomach," wearing a snug abdominal supporter or a moderately tight abdominal binder, while pursuing the method, makes the fat disappear much more promptly from this locality, and also braces up the reduced form as absorption progresses.

My father, Dr. D. W. Cathell, has recently, at my request, tested this method on nearly a dozen cases of over-fatness with favorable results, and I hold in my hand now, the records of eleven cases, seven males and four females, who have used Kissingen and Vichy, more or less methodically, with the following positive results: A fat grocer, reduced from 310½ to 289 pounds in eleven weeks; bar-keeper, reduced from 223 to 180 pounds in nineteen weeks; a lawyer, reduced from 191 to 173 pounds in fourteen weeks; young real estate agent, from 173 to 151 pounds in twelve weeks; clergyman, reduced 16 pounds in nine weeks; lady, aged 28 years, from 286½ to 264 pounds in thirteen weeks; stout actress, from 173 to 166 pounds in seven weeks; young English lady, from 149 to 142 pounds in five weeks; conductor on steam cars, from 183 to 174 pounds in six weeks; lady, aged 41, from 173½ to 160½ pounds in eleven weeks, and that of a well-known physician, who was reduced by an irregular use of Kissingen and Vichy from 211 to 196½ pounds in nine weeks.*

Fortified by such observations, I do not hesitate to assert, that the *heavy-laden*, who are suffering with the fat-forming diathesis, and wish to reduce their surplus to healthy limits, and to regulate its further formation, can do so by avoiding over-eating, limiting the use of sugary and starchy articles, fatty and oily food, and the alcoholics, and using Kissingen and Vichy Waters by the rules already mentioned.

Based on equally clear proof, I am also equally convinced that the lean, the puny, the slim, the pale, and the flabby; those with weak hearts, irregular circulation, poor vitality, or limited health; together with all that numerous class of *feather-weights* whose percentage of fatty tissue is so scanty that they should either try to increase the number and fulness of their fat-cells, else let them remain as they are, should seek good, nutritious food, fresh air, and moderate exercise, and avoid mineral waters in general, and Kissingen and Vichy in particular.

My sole object, Mr. Chairman, in bringing before you a subject so far separated as this from the specialty to which I limit my practice—the Nose and Throat—is, that having observed what I believe to be a valuable therapeutic fact, I feel it to be my duty to lay it before the profession.

1368 N. Charles Street.

*NOTE TO THE NINTH EDITION.—Since this paper was originally published very many reports of the successful use of Kissingen and Vichy have reached me, varying from the loss of fifteen, twenty, or thirty pounds, up to ninety.

- 7 -

NOTE.

The foregoing, a proof of the value of ARTIFICIAL KISSINGEN and VICHY WATERS in cases of obesity, is an example of the claims we are sustaining for these waters.

We again call the attention of the profession and the public in general to the fact that we are the only manufacturers in the west, who produce waters which can make any claim of being correct representations of the respective springs. Our waters, besides being more economical, are also by far superior to any of the effervescing salts or tablets, and hence best adapted for the treatment of obesity, as suggested by Dr. Cathell. They are in fact the only waters in the market from which positive results have been obtained. We print below but a few of the many unsolicited testimonials received from people who have been benefited by our waters.

W. T. WAGNER'S SONS.

Mr. J. B. Downing, of Middleport, Ohio, writes us under date of January 18, 1899: "Dr. Whittaker's treatment in connection with your waters which he prescribed, have improved my wife rapidly."

Dr. E. W. Parker, of Gallipolis, Ohio, says January 5, 1899: "I can recommend the use of your Kissingen and Vichy waters to persons troubled as I am with an extra amount of fat. I went from 277 pounds to 248 pounds in six weeks and want to go to 200 pounds."

Mr. Harry A. Phillips, Superintendent of the National Lead Company, Cincinnati, writes us under date of November 3, 1899: "About nine weeks ago my wife began the treatment for obesity, drinking alternately your Vichy and Kissingen Waters, during which time she has been in perfect health, gradually losing her surplus flesh. When she began the treatment she weighed 228 pounds, she now weighs 202 pounds, having reduced her weight 26 pounds in nine weeks."

B. F. Longstreet, of the Longstreet Lecture Bureau, Hulbert Block, writes us under date of November 8, 1899: "Your Kissingen and Vichy Waters, taken after each meal on alternate days for eleven weeks, has reduced my weight from 213 to 193 pounds, a loss of 20 pounds, for which I am very grateful."

Dr. David DeBeck, No. 10 W. 7th St., Cincinnati, O., writes us under date of September 1, 1900: My wife began using (on alternate days) Vichy and Kissingen waters supplied by you, in October, 1899. She weighed 226 pounds. She continued the use until March, 1900. During this period (about 20 weeks) she lost 22 pounds, or at about the rate of one pound a week. This is about the *proper* rate, but somewhat less than the *usual* rate.

Her health remained excellent; and she had greatly increased comfort. I then discontinued its use, but she has since lost about six pounds. We shall again resume it for another period soon.

THE LIST OF OUR

ARTIFICIAL MINERAL WATERS

EMBRACES THE FOLLOWING:

VICHY,

SELTERS,

KISSINGEN,

WAGNER'S LITHIA,

SARATOGA,

KISSINGEN BITTER,

PÜLLNA,

HUNYADI JANOS

APOLLINARIS,

EMS (Kränchen),

CARLSBAD,

*In single, double and
quadruple strength.*

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(Here follows Defendants' Exhibit Street Car Advertisement marked p. 273, and Essay on the Reduction of Obesity marked p. 275.)

250 EMILIE SAXLEHNER VS. EDWARD WAGNER ET AL.

287 And afterwards towit on April 17, 1907, praucipe for appearance of counsel was filed clothed in the words and figures as follows:

United States Circuit Court of Appeals, Sixth Circuit,

No. 1682.

EMILIE SAXLEHNER
vs.
EDWARD WAGNER ET AL.

Frank O. Loveland, Clerk of said Court:

Please enter my appearance as counsel for the complainant-appellant.

ANTONIO KNAUTH.

And afterwards towit on November 5, 1907, an entry was made upon the Journal of said Court which reads and is as follows:

United States Circuit Court of Appeals, Sixth Circuit,

No. 1682.

EMILIE SAXLEHNER
vs.
EDWARD WAGNER ET AL.

288 This cause is argued for the appellant by Mr. Antonio Knauth and by Mr. Walter F. Murray for the appellees and is continued until tomorrow for further argument.

And afterwards towit on November 6, 1907, an entry was made upon the Journal of said Court in said cause which is in the words and figures as follows:

United States Circuit Court of Appeals, Sixth Circuit,

1682.

EMILIE SAXLEHNER
vs.
EDWARD WAGNER ET AL.

This cause is further argued by Mr. Walter F. Murray for the appellees and by Mr. Frank F. Reed for the appellant and is submitted to the Court.

And afterwards towit on December 11, 1907, a decree was entered in said cause which reads and is as follows:

289 United States Circuit Court of Appeals for the Sixth Circuit.

No. 1682.

EMILIE SAXLEHNER

vs.

EDWARD WAGNER ET AL.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Ohio, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court, in this cause be and the same is hereby affirmed with costs.

And afterwards to wit on December 26, 1907, an opinion was filed in said cause clothed in the words and figures as follows:

Opinion.

290 Filed Dec. 26, 1907. Frank O. Loveland, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

1682.

EMILIE SAXLEHNER, Appellant.

v.

EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAGNER,
Appellees.

Appeal from the Circuit Court of the United States for the Western Division of the Southern District of Ohio.

Submitted November 5, 1907; Decided December 11, 1907.

Before Lurton, Severens and Richards, Circuit Judges.

RICHARDS, Circuit Judge. Delivered the Opinion of the Court.

This was a suit brought by Emilie Saxlehner, the widow and successor of Andrew Saxlehner, the proprietor of the original spring at Budapest, in Hungary, which produces a bitter medicinal water to which he gave the name "Hunyadi Janos," to enjoin Edward Wagner, William Wagner, and Sophia Wagner, makers and sellers, in Cincinnati, Ohio, of artificial waters, from manufacturing and selling an artificial water either under the name of Hunyadi Janos or Hunyadi.

The court below granted an injunction restraining the sale of artificial bitter water under the name of Hunyadi Janos, holding that such phrase constituted a trademark, the right to use which was exclusive in the plaintiff; but coming to the sale of artificial bitter water, made in conformity with Fresenius' analysis of the

291 Hunyadi Janos spring and called "Artificial Hunyadi Water," held that, under the decision of the Supreme Court of the United States in the case of *Saxlehner v. Eisner & Mendelson Co.*, 179 U. S., 19, the name "Hunyadi" had, by the laches of the plaintiff and her predecessor, become generic, indicative of a whole class of similar medicinal waters and thus not only in Hungary but in this country, the word had become public property. The right to individual appropriation thus once lost was gone forever.

There being no exclusive individual right in the plaintiff, the court below held that no case of unfair competition was made out, because nothing was done by the Wagners, either in the way they dressed their bottles of artificial Hunyadi water, or in the manner in which they advertised the same, to mislead the public or induce purchasers to believe that they were getting the natural Hunyadi water when they bought the artificial. All the propositions apparently argued before the court below were pressed with much force upon us, and in support of them we were especially referred to the case of *Saxlehner v. Thackeray*, originally decided by Judge Kohlsaat, and afterwards, on appeal, by the Circuit Court of Appeals of the Seventh Circuit. (*Thackeray v. Saxlehner*, 125 Fed. 911).

In the opinion of Judge Kohlsaat, printed in the record, stress is laid upon the fact that the artificial water sold by Thackeray under the name of Hunyadi water, was put out as the natural Hunyadi water which, of course, would warrant an injunction on the ground of unfair competition. In the opinion of the Court of Appeals, 125 Fed., 912, it is pointed out that the decision in the case of *Saxlehner v. Eisner & Mendelson Co.*, 179 U. S., 19, was not based upon the abandonment by Saxlehner and his successor, of the right to use the word "Hunyadi" to describe the natural medicinal water on sale, but upon the laches of Saxlehner and the failure to sue certain importers of similar medicinal water from the Budapest section in Hungary, for using the word "Hunyadi" to describe their waters. Such estoppel, the court held, could not avail Thackeray, for he was

292 not engaged in selling artificial "Hunyadi Water" until after Saxlehner's successor had commenced vigorously to assert her right to the exclusive use of the word "Hunyadi." And besides, the defendants, who were protected by the decision of the Supreme Court of the United States, were importers of natural bitter waters from Hungary. The Supreme Court never intended to throw such protection around a manufacturer of artificial medicinal water.

Having planted itself upon this ground, the court thought it unnecessary to go into the question of the similitude of the bottles, capsules and labels.

We have great respect for the Circuit Court of Appeals of the Seventh Circuit, but we find ourselves unable to agree with the view it takes of the result of the case of *Saxlehner v. Eisner & Mendelson*

Co. It seems to us that the subsequent case of the *French Republic v. Saratoga Vichy Springs Co.*, 191 U. S., 427, throws a light upon that decision which is useful. This suit was brought to vindicate the right of the French Republic and its lessee to the exclusive use of the word "Vichy," as against the Saratoga Vichy Springs Company. The court held that in view of the fact that the Saratoga Vichy Springs Company, and numerous manufacturers of artificial waters, had for many years been selling their waters in this country under the name of Vichy without any protest or action on the part of the French Company, the latter had thus allowed the name "Vichy" to become generic and indicative of the character of the water, referring to the case of *Sachlener v. Eisner & Mendelson*, 179 U. S., 49. The court therefore refused to enjoin the label used by the Saratoga Company, but indicated that if it had been so framed as to mislead the public into believing that the water which came from the Saratoga Springs was the real French vichy, it would grant the injunction prayed for, or compel a change in the label which would clearly indicate the origin of the water. We think the plain effect of this decision, coupled with that in *Sachlener v. Eisner & Mendelson Co.*, is to hold that where the protection of a trademark is lacking, the name of the natural imported water may be applied either to a similar natural water drawn from a spring in this country, or to artificial water made according to an analysis of a foreign spring, provided the latter be of the same general character and if artificial, contain the same chemical ingredients and properties as the imported natural water.

To the same effect see decisions in *City of Carlsbad v. Schultz*, 78 Fed., 469, and *La Republique Francaise v. Schultz*, 94 Fed., 500.

There being no trademark shown, and no case of unfair competition proved, the judgment of the court below must be affirmed.

294 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of *Emilie Saxlehner vs. Edward Wagner et al.*, No. 1682, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 8th day of January, A. D. 1908.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court
of Appeals for the Sixth Circuit.

295 UNITED STATES OF AMERICA, *ss.*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Emilie Saxlehner is appellant and Edward Wagner, William Wagner, and Sophia Wagner are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of Ohio, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the

296 said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of March, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

United States Circuit Court of Appeals, Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals, do hereby certify that the transcript of the record of the proceedings in this Court in the within entitled case heretofore certified by me for filing in the Supreme Court of the United States, was correct and complete as the same then appeared in this Court.

In pursuance of the command of the foregoing writ of certiorari I now hereby certify that on the 11th day of April, 1908, there was filed in my office a stipulation entitled in that case in the following words, to wit:

"United States Circuit Court of Appeals in and for the Sixth Circuit.

EMILIE SAXLEHNER, Appellant,

against

EDWARD WAGNER, WILLIAM WAGNER, and SOPHIA WAGNER, Appellees,

It is hereby stipulated by and between the counsel for the respective parties that the record in the case of Emilie Saxlehner, Appellant, against Edward Wagner, William Wagner and Sophia Wagner, Appellees, in the United States Circuit Court of Appeals, Sixth Circuit, which was certified by the Clerk of this Court, on the 18th

day of January, A. D., one thousand nine hundred and eight, and which certified copy was filed in the office of the Clerk of the United States Supreme Court, with the petition for a writ of certiorari, on the 19th day of February, one thousand nine hundred and eight, together with the exhibits filed in said case which are to be transmitted to the Clerk of the United States Supreme Court, be and the same hereby is, deemed to be a sufficient return on writ of certiorari, issued by the United States Supreme Court, dated the 25th day of March, 1908.

Dated April 6, 1908.

BRIESEN & KNAUTH,

Counsel and Solicitors for Appellant.

WALTER F. MURRAY,

Counsel and Solicitor for Appellees."

I further certify that the above is a true and correct copy of the said stipulation and of the whole thereof.

Witness my official signature and the seal of said Circuit Court of Appeals at the city of Cincinnati in said Circuit this 13th day of April, 1908.

[Seal United States Circuit Court of Appeals,
Sixth Circuit.]

FRANK O. LOVELAND,

Clerk United States Circuit Court of Appeals.

297 [Endorsed:] File No. 21,035. Supreme Court of the United States. No. 632, October Term, 1907. Emilie Saxlehner *vs.* Edward Wagner *et al.* Writ of Certiorari. Filed April 11, 1908. Frank O. Loveland, Clerk.

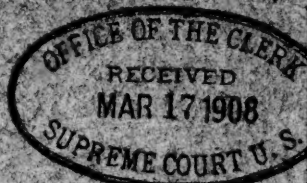
298 [Endorsed:] File No. 21,035. Supreme Court U. S. October Term, 1909. Term No. 81. Emilie Saxlehner, Petitioner, *vs.* Edward Wagner *et al.* Writ of Certiorari & return thereto. Filed April 15th, 1908.

81.

203.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1907.



EMILIE SAXLEHNER, PETITIONER *in re* PETITION FOR REHEARING OF
PETITION FOR WRIT OF CERTIORARI REQUIRING THE UNITED STATES
CIRCUIT COURT OF APPEALS IN AND FOR THE SIXTH CIRCUIT TO
CERTIFY TO THE SUPREME COURT OF THE UNITED STATES FOR REVIEW
AND DETERMINATION THE CAUSE OF EMILIE SAXLEHNER,

Appellant,

against

EDWARD WAGNER, WILLIAM WAGNER AND
SOPHIA WAGNER,

Appellees.

NOTICE OF MOTION, MOTION AND PETITION
FOR REHEARING
OF MOTION AND PETITION FOR WRIT
OF CERTIORARI.

ANTONIO KNAUTH,
FRANK F. REED,
ARTHUR v. BRIESEN,

Attorneys and of Counsel for Petitioner.

Supreme Court of the United States. ¹

EMILIE SAXLEHNER, Petitioner, AGAINST EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAG- NER, Respondents.	}	October Term, 1907. No. 632.
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Notice of Motion. ²

TO EDWARD WAGNER, WILLIAM WAGNER AND SOPHIA
WAGNER, THE ABOVE NAMED RESPONDENTS:

Please take notice that on Monday, March 23, 1908, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, a motion for a rehearing of the petition and motion for a writ of *certiorari* herein, of which motion a copy is annexed, will be submitted to the Supreme Court of the United States, at the City of Washington, D. C., for the decision of the Court therein. In support of said motion, a petition annexed thereto will also be presented to the Court, in addition to the papers upon which said motion for writ of *certiorari* was heretofore presented to the Court. A copy of said petition is also herewith served upon you.

Respectfully,

ANTONIO KNAUTH,
FRANK F. REED,
ARTHUR VON BRUESEN,

Attorneys and of Counsel for Petitioner.

New York, March 13, 1908.

Due service of the foregoing notice of motion in the above cause is hereby admitted this 16th day of March, 1908.

EDWARD WAGNER,
WILLIAM WAGNER,
SOPHIA WAGNER,
Respondents.

By WALTER F. MURRAY,
Their Attorney and Counsel.

4 SUPREME COURT OF THE UNITED STATES.

EMILIE SAXLEHNER, Petitioner,	} October Term, 1907. No. 632. Motion.
AGAINST	
EDWARD WAGNER, WILLIAM WAGNER and SOPHIA WAG- NER, Respondents.	

5 And now comes EMILIE SAXLEHNER, the above named petitioner, by Antonio Knauth, Frank F. Reed and Arthur von Briesen, her attorneys and counsel, and moves this Honorable Court for a rehearing or reconsideration of her petition and motion for a writ of *certiorari*, directed to the Honorable the Judges of the United States Circuit Court of Appeals within and for the Sixth Circuit, commanding them forthwith to certify and return to this Court all proceedings by them had in the suit lately before them, wherein this petitioner was appellant and said Edward Wagner, William Wagner and Sophia Wagner were appellees, which petition was denied by this Honorable Court on March 2, 1908.

6 This motion is made upon the ground that your petitioner believes that her case, as stated in her petition and the accompanying brief of her Counsel, filed in said case, marked No. 632, has not been stated with sufficient clearness and has for that reason not received full consideration by this Court, as pointed out more particularly in the additional petition accompanying this motion hereto annexed.

EMILIE SAXLEHNER,

By ANTONIO KNAUTH,

FRANK F. REED,

ARTHUR VON BRIESEN,

Her Attorneys and Counsel.

SUPREME COURT OF THE UNITED STATES. 7

EMILIE SAXLEHNER, Petitioner,
in re petition for a rehearing
 of her petition for writ of
certiorari, requiring the Cir-
 cuit Court of Appeals in and
 for the Sixth Circuit to cer-
 tify to the Supreme Court,
 for review and determina-
 tion, the case of

October Term,
 1907. No. 632.

Petition for Re-
 hearing.

8

EMILIE SAXLEHNER,
 Appellant,

AGAINST

EDWARD WAGNER, WILLIAM
 WAGNER and SOPHIA WAG-
 NER,
 Appellees.

TO THE HONORABLE THE SUPREME COURT OF THE
 UNITED STATES:

The petition of Emilie Saxlehner respectfully
 shows: 9

1. That on the 20th day of February, 1908, your
 petitioner filed in this court her petition for writ of
certiorari, requiring the Circuit Court of Appeals in
 and for the Sixth Circuit to certify to the Supreme
 Court, for review and determination, the case of
 your petitioner against Edward Wagner, William
 Wagner and Sophia Wagner, in which her bill in
 equity against said defendants had been dismissed
 by the Circuit Court of the United States for said
 Sixth Circuit, which decree had been affirmed by

10 said Circuit Court of Appeals; and with said petition filed a motion, notice of motion, and brief of her counsel in support thereof. That said papers were duly served upon Walter F. Murray, Esq., said defendants' attorney and counsel in said Circuit Court of Appeals.

2. That this Court, on March 2, 1908, denied your petitioner's petition for a writ of *certiorari*.

11 3. That your petitioner, among the several grounds upon which said petition was based, relied most strongly upon the ground that the decision of said Circuit Court of Appeals in the Sixth Circuit was in sharp conflict with the decision previously rendered by the Circuit Court of Appeals for the Seventh Circuit in your petitioner's case against one Thackeray, reported in Vol. 125, F. R., on page 911. But your petitioner did not annex to her said petition said two conflicting decisions, but referred to the record in which the opinion in the present case was reprinted, and to the reported decision of Saxlehner vs. Thackeray, 125 F. R., page 911, without quoting therefrom fully.

12 4. That in your petitioner's case against said Thackeray, the defendant, besides using the name "Hunyadi Geyza" had also imitated your petitioner's bottles in which the "Hunyadi Janos" water is sold, and had been separately enjoined by the Circuit Court from imitating the bottles, and also from using the name "Hunyadi" on any manufactured water. That perceiving the great importance of having the question decided as to whether manufacturers of artificial waters could use the name "Hunyadi" as a name for an artificial product, your petitioner's counsel urged the Circuit Court of Appeals in the Seventh Circuit to consider and decide that question, irrespective of any

fraud as to labels, or bottle, which might be in the 13
 case, and said Court so decided the Thackeray case,
 saying at the close of its opinion:

“It is unnecessary in the view thus taken
 to go into the case turning upon the similitude
 of bottles, capsules and labels; for if appel-
 lant is enjoined from the use of the word
 ‘Hunyadi,’ the other questions become prac-
 tically unimportant” (Thackeray *vs.* Sax-
 lehner, 125 F. R., 911, on p. 913).

This was so held after the Court had come to the
 conclusion that the decision of this Court in Saxleh-
 ner *vs.* Eisner & Mendelson Co., 179 U. S., 19, did
 not intend to protect the manufacturer of any arti- 14
 ficial water who was not in a position to make use of
 the defense of laches, upon which that case was
 decided.

5. The decision of the United States Circuit Court
 of Appeals for the Sixth Circuit in the present case
 is in sharp conflict with the decision of the Circuit
 Court of Appeals for the Seventh Circuit in the
 Thackeray case, as will appear by the following
 quotation from the opinion of Richards, Circuit
 Judge, who delivered the opinion of the Court of
 Appeals in the present case:

“In the opinion of the Circuit Court of Ap-
 peals, 125 F. R., 912, it is pointed out that the
 decision in the case of Saxlehner *vs.* Eisner
 & Mendelson Co., 179 U. S., 19, was not 15
 based upon the abandonment by Saxlehner
 and his successor of the right to use the word
 ‘Hunyadi’ to describe the natural medic-
 inal water on sale, but upon the laches
 of Saxlehner and the failure to sue cer-
 tain importers of similar medicinal water
 from the Budapest section in Hungary,
 for using the word ‘Hunyadi’ to describe
 their waters. Such estoppel, the Court held,
 could not avail Thackeray, for he was not
 engaged in selling artificial ‘Hunyadi Water’
 until after Saxlehner’s successor had com-
 menced vigorously to assert her right to the

16 exclusive use of the word 'Hunyadi.' And, besides, the defendants who were protected by the decision of the Supreme Court of the United States, were importers of natural bitter waters from Hungary. The Supreme Court never intended to throw such protection around a manufacturer of artificial medicinal water.

Having planted itself upon this ground, the Court thought it unnecessary to go into the question of the similitude of the bottles, capsules and labels.

We have great respect for the Circuit Court of Appeals of the Seventh Circuit, but we find ourselves unable to agree with the view it takes of the result of the case of *Saxlehner vs. Eisner & Mendelson Co.*"

17 The Court thereupon discusses that decision in the light of its citation by this Court in the subsequent suit of *French Republic vs. Saratoga Vichy Co.*, 191 U. S., 427, and comes to a conclusion which is diametrically opposed to that reached by the Circuit Court of Appeals for the Seventh Circuit.

6. Your petitioner believes that this expressed statement of conflict between the two decisions also furnishes a reason why the Circuit Court of Appeals in the present case did not consider at all in its decision the other questions urged before said Court, namely, that she was undoubtedly entitled to relief
18 against the use of the entire name "Hunyadi Janos" by defendants, as the defendants had recently used it, and by their answer to the bill denied her exclusive claim to said name, and that she was also entitled to an injunction against the manner in which the name "Hunyadi" had been used by the defendants, viz., as a prominent name, with the word "artificial" added in much smaller letters, and sometimes without the word "artificial," even if the Court should come to a conclusion opposed to that reached by the Court of Appeals in the Seventh Circuit.

7. Since presenting her petition for a writ of *certiorari*, your petitioner has read the brief filed by the appellees in opposition in which it is argued that "This Court having determined the question of the title to the term "Hunyadi" once and finally, it would be entirely contrary to precedent should the ruling of one Circuit Court of Appeals so upset the finding of this Court as to necessitate this Court's retrying the question and to subject a citizen who had governed his actions according to the finding of this Court to a persecution or prosecution therefor."

This statement is connected with many statements of fact and law which are entirely incorrect, but which cannot be discussed within the short limits set by this application. Your petitioner, however, respectfully urges upon the Court that the claim of the respondents, that they shaped their course in accordance with the finding of this Court (if that is meant by the words quoted) is untrue in fact, because they commenced the acts complained of before this Court ever expressed its opinion, and in the previous litigation the question as to whether the name "Hunyadi" could be used on artificial waters was never litigated, and further that the entire question in which the Circuit Courts of Appeals in the 7th and 6th Circuits are at odds with one another emanates from the varying constructions which these two Courts give to the language of this Court in the case of *Saxelchner vs. Eisner & Mendelson* above referred to. It being the law in the one Circuit that manufacturers can use the name "Hunyadi" and the law in the other Circuit that they cannot, a situation has arisen in which not only the petitioner's rights are in a state of confusion, but which in the interest of the public likewise urgently calls for an authoritative settlement of the question. If the present decision in the Sixth Circuit is allowed to stand, the term which is now confined in its application to natural Hungarian Bitter Waters will lose all meaning

22 whatever. The Courts can never undertake to decide which recipes may be near enough to any of the natural Hunyadi waters to deserve the appellation. This condition has not existed before the decision which petitioner has prayed to review, but is the necessary consequence of sustaining it.

If, on the other hand, as petitioner ~~maintains~~ in accordance with the Circuit Court of Appeals for the Seventh Circuit, the name has become a common appellation for the Hungarian *natural* bitter water (which seems to petitioner the plain meaning of the opinion of this Court in the case against the importers), then no one else outside that group should be allowed its use within the settled doctrine
 23 of the cases referred to in petitioner's brief heretofore submitted.

Wherefore, petitioner respectfully prays for a rehearing of her motion and petition for writ of *certiorari* hereinbefore referred to.

And your petitioner will ever pray, &c.

EMILIE SAXLEHNER,

By ANTONIO KNAUTH,

FRANK F. REED,

ARTHUR VON BRIESEN,

Her Attorneys and Counsel.

SOUTHERN DISTRICT OF NEW YORK, }
 State of New York, } ss.:
 County of New York, }

25

ANTONIO KNAUTH, being duly sworn, deposes and says: That he is one of the counsel for the petitioner herein, and as such has had personal charge for petitioner of the case in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; that the reason why this verification is not made by the petitioner is, that she is not in the United States but in the Kingdom of Hungary.

26

And deponent further says that this petition is made and presented by petitioner's authority, and that the foregoing application for a rehearing is meritorious and not made for the purpose of delay.

ANTONIO KNAUTH.

Subscribed and sworn to before me this 14th day of }
 March, 1908. }

FRANK F. KIRKPATRICK,
 Notary Public,
 New York County.

27

Opinion.

FILED

Dec. 26, 1907.

FRANK O. LOVELAND,
Clerk.

1682.

UNITED STATES CIRCUIT COURT OF
APPEALS,

SIXTH CIRCUIT.

29

EMILIE SAXLEHNER,
Appellant,

v.

EDWARD WAGNER, WILLIAM
WAGNER and SOPHIA WAG-
NER,

Appellees.

Appeal from the
Circuit Court of the
United States for
the Western Divi-
sion of the Southern
District of Ohio.

Submitted November 5, 1907.

Decided December 11, 1907.

30

Before LURTON, SEVERENS and RICHARDS,
Circuit Judges.

RICHARDS, Circuit Judge, delivered the opinion of the Court:

This was a suit brought by Emilie Saxlehner, the widow and successor of Andrew Saxlehner, the proprietor of the original spring at Budapest, in Hungary, which produces a bitter medicinal water to which he gave the name "Hunyadi Janos," to enjoin Edward Wagner, William Wagner and Sophia Wagner, makers and sellers, in Cincinnati, Ohio, of

artificial waters, from manufacturing and selling an artificial water either under the name of Hunyadi Janos or Hunyadi. 31

The Court below granted an injunction restraining the sale of artificial bitter water under the name of Hunyadi Janos, holding that such phrase constituted a trade-mark, the right to use which was exclusive in the plaintiff; but coming to the sale of artificial bitter water, made in conformity with Fresenius' analysis of the Hunyadi Janos spring and called "Artificial Hunyadi Water," held, that under the decision of the Supreme Court of the United States in the case of *Saxlehner v. Eisner & Mendelson Co.*, 179 U. S., 19, the name "Hunyadi" had, by the laches of the plaintiff and her predecessor, become generic, indicative of a whole class of similar medicinal waters, and thus not only in Hungary, but in this country, the word had become public property. The right to individual appropriation thus once lost was gone forever. 32

There being no exclusive individual right in the plaintiff, the Court below held that no case of unfair competition was made out, because nothing was done by the Wagners, either in the way they dressed their bottles of artificial Hunyadi water, or in the manner in which they advertised the same, to mislead the public or induce purchasers to believe that they were getting the natural Hunyadi water when they bought the artificial. All the propositions apparently argued before the Court below were pressed with much force upon us, and in support of them we were especially referred to the case of *Saxlehner v. Thackeray*, originally decided by Judge Kohlsaat, and afterwards, on appeal, by the Circuit Court of Appeals of the Seventh Circuit (*Thackeray v. Saxlehner*, 125 Fed., 911). 33

In the opinion of Judge Kohlsaat, printed in the record, stress is laid upon the fact that the artificial water sold by Thackeray under the name of Hunyadi water, was put out as the natural Hunyadi water, which, of course, would warrant an injunction on

- 34 the ground of unfair competition. In the opinion of the Court of Appeals, 125 Fed., 912, it is pointed out that the decision in the case of *Saxlehner vs. Eisner & Mendelson Co.*, 179 U. S., 19, was not based upon the abandonment by Saxlehner and his successor, of the right to use the word "Hunyadi" to describe the natural medicinal water on sale, but upon the laches of Saxlehner and the failure to sue certain importers of similar medicinal water from the Budapest section in Hungary, for using the word "Hunyadi" to describe their waters. Such estoppel, the Court held, could not avail Thackeray, for he was not engaged in selling artificial "Hunyadi Water" until after Saxlehner's successor had
- 35 commenced vigorously to assert her right to the exclusive use of the word "Hunyadi." And, besides, the defendants, who were protected by the decision of the Supreme Court of the United States, were importers of natural bitter waters from Hungary. The Supreme Court never intended to throw such protection around a manufacturer of artificial medicinal water.

Having planted itself upon this ground, the Court thought it unnecessary to go into the question of the similitude of the bottles, capsules and labels.

- 36 We have great respect for the Circuit Court of Appeals of the Seventh Circuit, but we find ourselves unable to agree with the view it takes of the result of the case of *Saxlehner v. Eisner & Mendelson Co.* It seems to us that the subsequent case of the *French Republic v. Saratoga Vichy Springs Co.*, 191 U. S., 427, throws a light upon that decision which is useful. This suit was brought to vindicate the right of the French Republic and its lessee to the exclusive use of the word "Vichy," as against the Saratoga Vichy Springs Company. The Court held that in view of the fact that the Saratoga Vichy Springs Company, and numerous manufacturers of artificial waters, had for many years been

selling their waters in this country under the name 40
 of Vichy without any protest or action on the part
 of the French Company, the latter had thus allowed
 the name "Vichy" to become generic and indica-
 tive of the character of the water, referring to the
 case of *Saxlehner v. Eisner & Mendelson*, 179 U. S.,
 19. The Court therefore refused to enjoin the label
 used by the Saratoga Company, but indicated that
 if it had been so framed as to mislead the public into
 believing that the water which came from the Sara-
 toga springs was the real French vichy, it would
 grant the injunction prayed for or compel a change
 in the label which would clearly indicate the origin
 of the water. We think the plain effect of this de-
 cision, coupled with that in *Saxlehner v. Eisner &* 41
Mendelson Co., is to hold that where the protection
 of a trade-mark is lacking, the name of the natural
 imported water may be applied either to a similar
 natural water drawn from a spring in this country,
 or to artificial water made according to an analysis
 of a foreign spring, provided the latter be of the
 same general character, and if artificial, contain the
 same chemical ingredients and properties as the im-
 ported natural water.

To the same effect see decisions in *City of Carls-*
bad, v. Schultz, 78 Fed., 469, and *La Republique*
Francaise v. Schultz, 94 Fed., 500.

There being no trade-mark shown, and no case of
 unfair competition proved, the judgment of the 42
 Court below must be affirmed.

THACKERAY V. SAXLEHNER.

(Circuit Court of Appeals, Seventh Circuit,
October 6, 1903.)

No. 951.

Before JENKINS, GROSSCUP and BAKER, *Circuit Judges*.

41 GROSSCUP, *Circuit Judge*: The appellant manufactures in Chicago, according to a recipe not disclosed, the bitter waters to which he attaches the name of Hunyadi Geyza. His business was not in existence prior to the decision of the Supreme Court in Saxlehner v. Eisner & Mendelson Company, 179 U. S., 19; 21 Sup. Ct., 7, 45, L. Ed., 60, nor has he ever been, so far as the record discloses, an importer of natural bitter waters from Hungary. Whether, under these circumstances, appellee is entitled to restrain his use of the word "Hunyadi," is the principal question presented.

42 It is stipulated that the facts set forth in Saxlehner v. Eisner & Mendelson Company, *supra*, are to be taken as the facts in the case under consideration. Without transcribing into this opinion the statement at large, it is sufficient to say that in 1862 Andreas Saxlehner, predecessor of appellee, discovered at Budapest, Hungary, a spring named by him "Hunyadi," in honor of a Hungarian hero of the fifteenth century; that under an order of the municipal council of the place where the wells were located, he subsequently sunk other wells, and began to export the waters to European countries and the United States; that for this purpose he adopted a novel style of bottle of straight shape with short neck, to which was attached a metal capsule bearing the inscription (translated) "Hunyadi Janos bitter water of Buda," as also a peculiar

label covering the body of the bottle, divided into 43
 three longitudinal panels, the middle one of which
 bore the supposed portrait of the hero, with the
 name Hunyadi Janos written in large letters on the
 top—the color of the middle panel being a reddish
 brown, and the other panels white; and the water,
 in this kind of bottles, has found its way to the
 United States to the extent of about one million
 bottles a year, and is known at large as Hunyadi
 water.

In 1872 another water from the same locality was,
 under an order of the Minister of Agriculture of
 Hungary, put upon the market under the name of
 "Hunyadi Matyas," and under that name found its 44
 way into the United States. Other waters from the
 same locality, known as "Hunyadi Arpad," and
 "Hunyadi Josef" and the like, came under the per-
 mission named upon the market, including the
 market of the United States.

Against some of these importers, suits were
 brought in 1886 in the Circuit Court of the United
 States and in the State Courts of New York, by the
 Appollinaris Company, Limited, of London, the
 distributing agents of Saxlehner; in some of which
 suits *ex parte* injunctions were issued, and in others
 the suits withdrawn for want of jurisdiction; but in
 1888 the pending injunctions were dissolved and the
 suits discontinued. In all of these suits the defend-
 ants thereto seem to have relied upon the fact that 45
 under the laws of Hungary, as the laws then were,
 they could rightly use the word "Hunyadi" pro-
 vided they annexed thereto as a suffix a word
 different from "Janos." Subsequently, however,
 the laws of Hungary were changed so that in 1895
 Saxlehner was enabled to register the name "Hun-
 yadi" as a trade-mark, and to procure the cancella-
 tion of the other trade-marks incorporating that
 name. Under this changed law of Hungary the
 case of Saxlehner v. Eisner & Mendelson Company,
supra, was brought in 1897.

- 46 As we read the decision in that cause the Supreme Court held that appellee had a rightful monopoly of the use of the word "Hunyadi," and that there had been no such abandonment as made it a generic term usable at the pleasure of any one engaging in the sale of bitter waters; but that owing to laches her failure, to bring suit against certain importers engaged in the importation of natural bitter waters from Hungary, appellee was estopped as against them from maintaining her suit. The defeat of appellee and the success of her opponents in the case was grounded not upon abandonment but upon estoppel, an estoppel growing out of the fact that the importers defending had been allowed
- 47 during the period of appellee's acquiescence a period of nine years to build up a business in the importation and sale of natural Hungarian waters in the markets of the United States.

But the estoppel named will not avail the appellant in the case under consideration. He was not engaged in the sale of his waters until after appellee had commenced vigorously to assert her right to the exclusive use of the word "Hunyadi." He entered the market, therefore, with this name upon his manufactured water, not under the implied permission, but against the earnest protest of the owner of the name. Nor is appellant's case in other essential respects like that of the importers of natural bitter waters from Hungary. Such importers,

48 though giving to the public water other than that from appellee's springs, give genuine native Hungarian water of a character almost identical with that of appellee, and at a price measured by the costs of bringing it from Hungary to the United States. Appellant offers a manufactured water, of whose contents the public has no knowledge, and at a cost ruinous to the importation of the genuine water. The Supreme Court never meant, in our judgment, to throw around such a competitor the protection of the estoppel indicated, or expose

the public to a device under which they would 49
drink the waters of Lake Michigan doctored after
appellant's recipe in the belief that they were
drinking the natural waters of Hungary.

It is unnecessary in the view thus taken to go
into the case turning upon the similitude of bottles,
capsules and labels; for if appellant is enjoined
from the use of the word "Hunyadi, the other
questions become practically unimportant.

The decree of the Circuit Court is affirmed.



NOV 6 1909

JAMES H. MCKENNEY,

CLERK

Supreme Court of the United States.

OCTOBER TERM, 1909.
No. 81.

EMILIE SAXLEHNER,

Petitioner-Appellant,

vs.

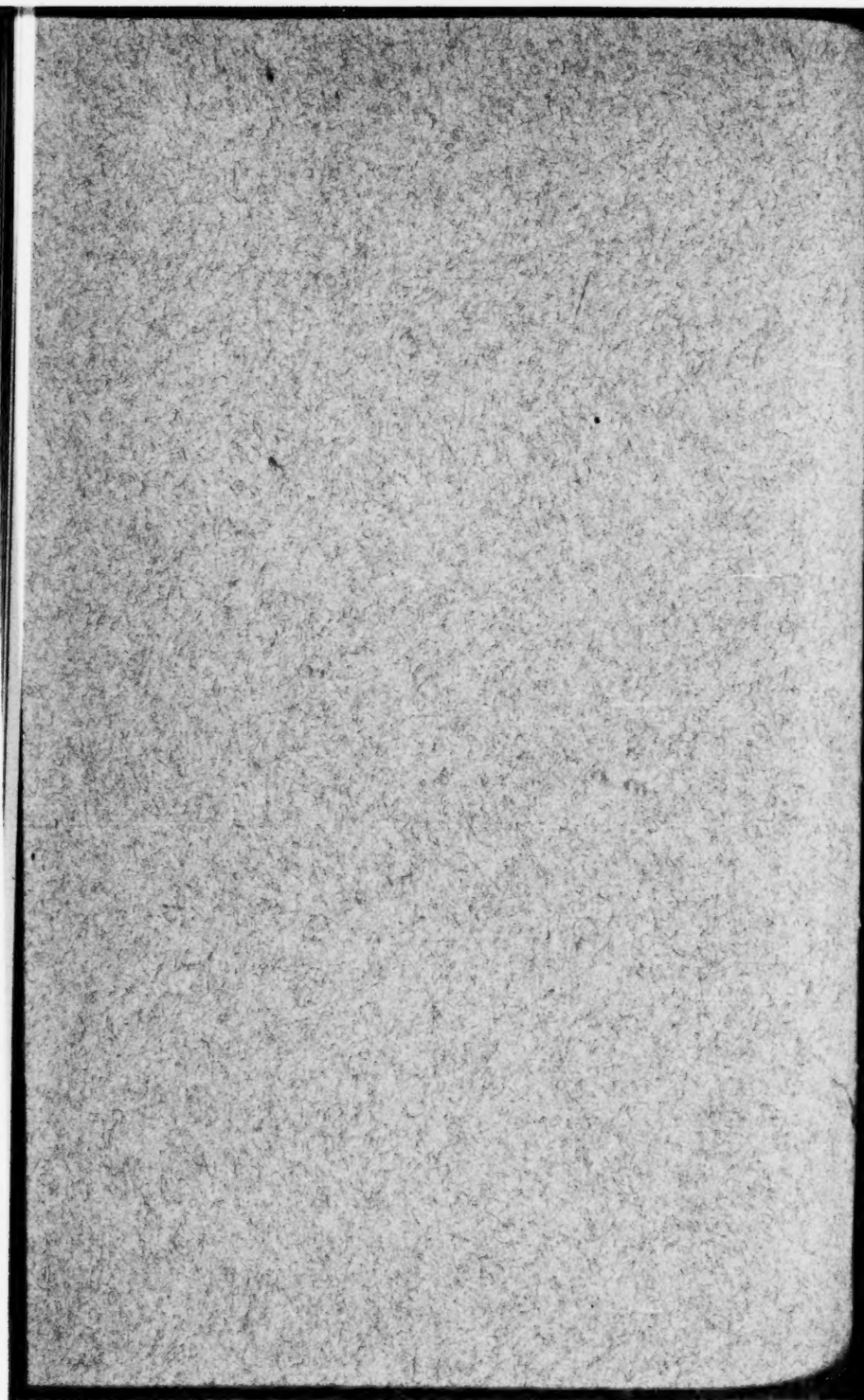
EDWARD WAGNER, WILLIAM WAGNER AND SOPHIA WAGNER,
Respondents-Appellees.

Brief on Behalf of Petitioner-Appellant.

ANTONIO KNAUTH,

JOHN G. JOHNSON,

Of Counsel for Petitioner-Appellant.



Supreme Court of the United States.

OCTOBER TERM, 1909.

EMILIE SAXLEHNER,
Petitioner-Appellant,

AGAINST

EDWARD WAGNER, WILLIAM
WAGNER and SOPHIA WAGNER,
Respondents-Appellees.

No. 81.

On writ of certiorari to the United States Circuit
Court of Appeals for the Sixth Circuit.

BRIEF ON BEHALF OF PETI- TIONER-APPELLANT.

Introduction.

This case, which comes before this Court pursuant to a writ of certiorari issued to the Circuit Court of Appeals for the Sixth Circuit, was brought to protect the rights of Emilie Saxlehner, the owner of the Hungarian bitter water springs called "Hungyadi Janos," from encroachment upon the name of the water by a firm of manufacturers of artificial waters in Cincinnati. The writ was applied for and granted for the reason that the Circuit Court of Appeals for the Seventh District had previously

rendered a decision in favor of Emilie Saxlehner against one Thackeray, upon similar facts, deciding the question which underlies both cases in her favor, while the Circuit Court of Appeals for the Sixth Circuit has come to a different conclusion, dismissing petitioner's Bill of Complaint and stating its dissent from the holding of the Circuit Court of Appeals for the Seventh Circuit. For the convenience of the Court, the decision of the Circuit Court of Appeals for the Seventh Circuit in the case of Saxlehner vs. Thackeray is reprinted at the end of this Brief. It is reported in Volume 125, F. R., on page 911. The opinion of the Circuit Court of Appeals for the Sixth Circuit delivered in the present case is found on pages 251 to 253 of the record, these pages being bound in nearly at the end of the record.

The principle involved in the present litigation is essentially different from that which was adjudicated upon in complainant's previous litigation against importers of natural bitter waters from Hungary, the present litigation being directed against the manufacturer of an artificial water in this country, and the case derives its importance from the fact that if this Court should uphold the decision in the Sixth Circuit as against that in the Seventh Circuit, every druggist or manufacturer of waters in the United States would be enabled to make a water somewhat similar to complainant's Hunyadi Water and call it his Hunyadi, thereby utterly destroying the value of a name, which is of great monetary value to the complainant in her business, and which, at the present time, serves as a guarantee to the public that the water offered under it is a natural Hungarian bitter water.

The complainant's previous litigation, which was decided by this Court in the year 1900 and the opinion in which is reported under the title of Saxlehner vs. Eisner & Mendelson Company, 179 U. S.,

19, was brought against several importers of competing natural bitter waters from Hungary coming from different springs at or near Budapest, which, in that country, had been named by such names as Hunyadi Matyas, Hunyadi Lajos, Hunyadi Bela, or with some other suffixes to Hunyadi under sanction of the Hungarian law then existing. In that litigation, which we shall hereafter more fully discuss, the question of applying the name "Hunyadi" to any artificial mineral water was not involved or discussed, the question at issue being solely whether the other waters like Hunyadi Matyas, Hunyadi Lajos and so forth, could be enjoined from using the name "Hunyadi" as a part of their composite names. The ultimate decision of the Court was that under the previous condition of the Hungarian laws, the treaty with Hungary and the complainant's delay in enforcing her rights against these waters in this country, she had lost her right to the exclusive right to the name Hunyadi on the Hunyadi Janos water and had to allow the continued use of the other Hunyadi names on those waters, her relief being confined to the label which had been fraudulently imitated by the purveyors of those Hungarian waters.

The defendants in the present case do not import any water from Hungary, but make an artificial water in Cincinnati, but they claim for themselves the beneficial consequences of the decision of this Court and the controversy may be characterized in the most general way by saying that according to complainant's contention, "Hunyadi" has become a common name in this country for complainant's water and those other waters which have been imported from Hungary under the various composite Hunyadi names above referred to, while the defendants maintain that it has become a name for a certain quality of water and that they can use it with impunity if they add to it some statement that they

make it. We believe this latter contention to be wholly erroneous, because the proofs in the case show that the imported waters have no common quality, except so far as they come from Hungary and are natural aperient waters, varying largely in their compositions; and also because the defendants do not intend to represent in their artificial water any such common quality or type, but imitate Hunyadi Janos water solely and say so. The profitable nature of that undertaking, if permitted by the courts, will appeal to every one who knows that the Hunyadi Janos water has been vastly sold and advertised for more than forty years, that it is a household commodity in every civilized country and that several millions of bottles of it are consumed every year in this country alone.

Statement of the Case.

The final decree of the Circuit Court of Appeals for the Sixth Circuit (Record, page 251) confirmed a decree of the Circuit Court dismissing the bill of complaint (Record, page 158). In a memorandum opinion delivered by Judge Thompson in the Circuit Court (Record, p. 157) it was held that Saxlehner had an exclusive right to the trade name "Hunyadi Janos," but had no such right to the word "Hunyadi" without the suffix "Janos," the Court saying: "That word has become generic and indicative of the whole class of Budapest bitter waters and became public property in Hungary more than twenty years ago, and under the provisions of our treaty with the Austro-Hungary Emperor of June, 1872 (17 Stat., 917), it also became public property here. (Citing) *Saxlehner vs. Eisner & Mendelson Co.*, 179 U. S., 35 to 36."

The Court also held that no unfair competition was proved. The statement that the word "has become indicative of the whole class of Budapest

bitter waters" is not supported by the evidence in the case which clearly shows that many bitter waters are imported from Budapest springs under other names, such as "Apenta," "Victoria" and "Rakoezi" and others, which have never been called "Hunyadi" either in Hungary or in this country, and that the name "Hunyadi" has always been confined to those springs which employed the name "Hunyadi" in connection with some distinguishing suffix under sanction of the former Hungarian law. If the name became generic by such use, it became generic only for the waters so named. We also submit that the provisions of the Austro-Hungary treaty which protected those waters coming from Hungary cannot inure to the benefit of a domestic manufacturer.

The bill of complaint was brought to enjoin the defendants from selling an artificial mineral medicinal water under the complainant's trademark or tradename for natural bitter water called "Hunyadi Janos" or shortly known as "Hunyadi" water, and from using such expressions in defendants' advertisements, pricelists and catalogues as were calculated to induce the belief that the defendants' artificial water was the commodity sold by the complainant or had some connection therewith. Incidental relief by an accounting for profits was also prayed for.

The bill was filed in November, 1900. It originally complained of defendants' use of the name "Hunyadi Janos" upon defendants' bottles or siphons, charging also that defendants' artificial bitter water was sold at a price lower than that at which complainant sold in the market, and that the defendants, in order to further the deception produced by the name "Hunyadi Janos," had added thereto the false and fraudulent description "Ofen Bitter Water," meaning a bitter water coming from the City of Ofen, which is synonymous

with the name "Buda," constituting a portion of the combined cities of Budapest. There were attached to the bill of complaint a copy of the label used on defendants' bottles and the pricelist used by the defendants. The label (Record, page 6) obviously gave rise to the claim of infringement of complainant's trademark "Hunyadi Janos" and in the pricelist which is dated September 1, 1897 (Record, pages 6-7) the defendants' artificial water is again called "Hunyadi Janos" (Ofen Bitter) in pints per dozen \$1.20."

Subsequently the complainant ascertained that the defendants were putting their artificial water upon the market under a somewhat changed style of label, the principal change consisting in leaving out the name "Janos" and using solely the name "Hunyadi" as a name for defendants' bitter water. A copy of this changed label of the defendants as used on siphons (in green print) is found in front of page 51 of the record, on which page also appears a copy of the defendants' changed label applied to the bottles; on both these labels, the name "Hunyadi" is the most prominent as being shown in more conspicuous characters than anything else thereon. By referring directly under that word to the analysis of the "Hunyadi Janos" springs, the defendants' meaning is made clear that they want to present to the public an artificial "Hunyadi Janos" water and not some other water which might be called "Hunyadi," although defendants claim on the labels that their water is different from the natural "Hunyadi Janos" water, more active, digestible and pleasant and in every respect superior to the imported "Hunyadi" waters.

An amended bill of complaint was thereupon filed which charged infringement both by the use of the term "Hunyadi Janos" and "Hunyadi" (Record, pages 9 to 15).

The defendants filed a demurrer and answer to

this amended bill (Record, pages 15 to 18) and a hearing was had before the Circuit Court thereon which overruled the demurrer and granted a preliminary injunction prohibiting the defendants from using complainant's trademark "Hunyadi Janos," but denying complainant's motion for an injunction against the use of the name "Hunyadi" (Record, page 19). The defendants thereafter filed an answer to the amended bill of complaint, which is to be found on pages 52 to 53 of the record. In this amended answer, the defendants pleaded that prior to the filing of the suit they had changed the reading of their labels, substituting "Hunyadi" for "Hunyadi Janos," making the same substitution also in the price lists; but they denied in their answer that the complainant had any exclusive rights in the words "Hunyadi Janos" or the names "Hunyadi" or "Janos." (See Paragraph 3 amended answer, Record, page 52.) They also claimed in their answer that artificial "Hunyadi Janos" had been made and sold long before the time when Andreas Saxlehner introduced his natural "Hunyadi Janos" water into this country.

In spite of this defiance of complainant's claim to the name "Hunyadi Janos" and defendants' admitted use thereof, and in spite of an entire lack of proof of the allegations of the answer concerning a defence as to "Hunyadi Janos," the bill was dismissed by the Circuit Court as above stated (Record, page 157).

It appears from the defendants' answer to the bill of complaint (Record, page 17, paragraph 2) that the defendants commenced to put their artificial Hunyadi Janos water upon the market on August 28, 1897, using those labels up to May, 1900, when the word "Janos" was discarded and the labels printed in the styles appearing on the page immediately preceding page 51 of the record, using the name "Hunyadi," together with the ex-

pression "Conforming to Fresenius' analysis of the Hunyadi Janos springs." Knowledge of the defendants' acts first came to complainant's agent in this country, Albin Trojan, in the year 1898 (Record, page 22). As soon as he learned of it, his solicitors protested by letter to the defendants, which protest elicited a letter dated June 18, 1898, from the defendants' solicitor to the complainant's solicitors. In that letter, the defendants' solicitor expressed the opinion that the complainant *had no rights* under the circumstances known to him, and that the defendants would await the outcome of a fairly contested case involving the same facts before receding from their position. At that time, the complainant was under a heavy burden in carrying on her litigation against the importers which entailed a large outlay and great effort on her part, but when finally, she had been victorious in the Supreme Court in October, 1900, she, at once, in the month of November, 1900, instituted the present suit. The defendants' changed labels were, therefore, adopted about half a year before the suit was instituted, but in the answer to the complaint, the defendants maintained that complainant had no exclusive right to the name "Hunyadi Janos" either, thus claiming that they are entitled to use the expression "Artificial Hunyadi Janos Water," although they discarded the labels bearing that imprint.

It is also shown in the present case that with the suppression of the fraudulent labels used by Saxeheimers' competitors, the sale of the Hunyadi Matyas and Hunyadi Lajos waters, the only ones which survived in any quantities at the time of the previous litigation, has practically ceased and that once more the Hunyadi Janos water is almost universally the only water which the public buys and uses under the name of "Hunyadi Water" (Record, pages 23-24, questions 35 and 36). This is not de-

nied and is in harmony of the statements of defendants' own witnesses, Bodeman and Fennel. Bodeman says:

"x-Q. 145. If I were to come to your drug store and ask for a bottle of Hunyadi water, what would you give me? A. Hunyadi Janos is the only kind I have on sale" (Record, pages 6-7, x-Q. 145).

Fennel says:

"x-Q. 81. If a person comes into your store and asks for a glass of Hunyadi, what do you give him? A. I think I can safely say that within the last three years we have not given them anything but Hunyadi Janos, 'Blue Label' and blue wrapper" (Record, page 80, x-Q. 81).

It was also proved in the case that Hunyadi is not descriptive of any bitter water, unless it be Hunyadi Janos, because the other Hunyadi waters all vary in composition and have totally different analyses. It has no value as a chemical name, but only points to the origin of the water in Hungary.

Assignment of Errors.

The errors which were assigned to the Circuit Court of Appeals upon the appeal from the decree of the Circuit Court dismissing the bill, were as follows:

I.—The Court erred in deciding that the complainant had not the exclusive right, as against the defendants as manufacturers of artificial waters, to the name "Hunyadi" as a trade mark.

II.—That the Court erred in deciding that the complainant had not, as against the defendants as manufacturers of artificial mineral waters, the right to enjoin them from using the name "Hunyadi" as a *name* for an artificial product, on the principle of unfair competition.

III.—That the Court erred in holding that the evidence in the case failed to show the unfair competition charged in the bill of complaint and in failing to find that the use of the name "Hunyadi" by the defendants was not accompanied by such statements, as would make deception or confusion impossible.

IV.—That the Court erred in not holding that by the use of the name "Hunyadi Janos" on its bottles and labels, the defendants had infringed the trade mark rights of the complainant to the name "Hunyadi Janos."

VI.—That the Court erred in dismissing complainant's Bill of Complaint.

VII.—That the Court erred in failing to grant to complainant a perpetual injunction enjoining the defendants from the use of the names "Hunyadi Janos" and "Hunyadi" and each of them as a name for the artificial product manufactured and sold by the defendants.

VIII.—That the Court erred in not granting to the complainant any part of the relief prayed for in the Bill of Complaint (Record, pages 159-160).

The 5th assignment of errors is unimportant.

The Issues Raised by Appellee's Answer to the Amended Bill.

The defendants' answer to the amended complaint (Record, pages 52-54) raised the following defenses:

I.—That the defendants, previous to the bringing of the suit, had changed their labels and price lists, so as to use the name "Hunyadi" thereon in-

stead of "Hunyadi Janos," as previously used by them.

II.—They denied that the complainant's predecessor, Andreas Saxlehner, ever had any valid trade mark in the words "Hunyadi Janos," or any exclusive right in that or the words "Hunyadi" or "Janos," and alleged that the registration of Saxlehner's trade mark for said two words in the patent office of the United States was obtained by fraud and false statements. No attempt to prove this defense was made, and it can be entirely disregarded.

III.—That prior to the introduction of Saxlehner's bitter water in the United States, artificial Hunyadi Janos water had been extensively manufactured in this country, which manufacture still continues. This defense, if it be a defense, is disproved by the defendants' own evidence, for defendants' witness, Eñno Sander testified that he had known the imported Hunyadi water as long as he had manufactured mineral water (Record, page 129, question 6), and that he sold it in his drug store fifty years ago and before he sold out the store in 1868 (Record, page 136, x-Qs. 65-67).

The defendants relied mainly upon his, Sanders', manufacture of artificial Hunyadi Janos in this country, but the witness's testimony showed that he manufactured only small quantities and upon physician's prescriptions and that he discontinued the use of the name when the matter came to the knowledge of complainant and a protest followed. Other instances of the manufacture of artificial Hunyadi Janos in this country are slight and sporadic, and the evidence shows that whenever they came to the knowledge of complainant, they were quickly suppressed. (See testimony of Trojan, Record, pages 20-27.)

The dismissal of this case was not based by the courts upon any such testimony of prior use or continued use of the name upon artificial water in this country, but merely upon the supposed meaning of this Court's decision in the case against the importers.

IV.—That long prior to the introduction of Saxlehner's water in the United States, "Artificial Hunyadi Janos" and "Artificial Hunyadi" were manufactured in large quantities and sold in Hungary, Germany and other foreign countries, which use and sale continue until the present time. The case contains no evidence whatever to substantiate this claim, indeed, no effort was made to substantiate it at all.

V.—That the word "Hunyadi" is a geographical term given to certain towns and districts in Hungary. No attempt to prove this has been made.

VI.—That the word "Hunyadi" became public property both in Hungary and the United States long before the bringing of this suit.

It is this last mentioned defence, which is sustained by the decisions below, in opposition to the decisions of the Circuit Court and of the Circuit Court of Appeals in the Seventh Circuit, in the case against Thackeray, and the main point to be decided upon this appeal is whether the decision of this Court in the case against the importers necessarily permits every one to adopt the name "Hunyadi" for any kind of artificial product made in some kind of resemblance to any one of the various Hungarian waters which once bore that name. That such a general, indiscriminate use of the name "Hunyadi" would deprive the name of all value, not only for the natural waters, but also for the artificial products, seems very evident.

Summary of the Facts and Argument.

1. "Hunyadi Janos" means and always has meant the natural water marketed by petitioner and her predecessor. This is the universal significance of the term. It does and can mean nothing else.

2. "Hunyadi" is the common and short term used in indicating and ordering the water marketed by petitioner and her predecessor. Ordinarily, it means such water. It may, however, mean one of a number of other natural bitter waters imported from Hungary under the "Hunyadi" name with some other distinguishing suffix than "Janos" such as "Matyas," "Lajos," "Bela," "Arpad."

3. The use by appellees of the term "Hunyadi Janos" originally, and "Hunyadi" at the present time, both as names for their product and in any way, was and is entirely unnecessary and unwarranted.

4. The adoption and use of these terms as names for an artificial, carbonated water made in Cincinnati is untruthful in fact, fraudulent in inception and continuance, deceptive as to the public, injurious to petitioner and intended and calculated to deplete the trade of petitioner and advance the trade of appellees.

5. The fraudulent intention and design of appellees in the selection of these names is clearly demonstrated by the manner in which they are employed upon labels, in price lists and advertising. On the labels "Hunyadi" is the conspicuous and noticeable word, as also in advertising "Hunyadi" is conspicuous and emphatic, while the distinguishing context is slighted.

6. The artificial water of the appellees is not "Hunyadi," nor is it artificial "Hunyadi." It is a different water claimed by appellees to be superior to "Hunyadi Janos," more active, digestible and pleasant. It is effervescent, carbonated water, while the natural "Hunyadi Janos" is a still water.

Argument.

In the former decision of this Court against the importers (179 U. S. 19), it was pointedly held that there was nothing in the facts proved tending to show an abandonment by Saxlehner or the plaintiff of their rights either in the name "Hunyadi" or in the labels. The relief by injunction on the name "Hunyadi" was withheld upon grounds which together made an enforcement of petitioner's trademark right in the name "Hunyadi" impossible against the defendants in that case, who were importers of natural Hungarian bitter waters bearing composite names such as "Hunyadi Matyas" "Hunyadi Lajos" and others. These facts were the condition of the Hungarian laws until the year 1895, which permitted in Hungary the adoption of those composite names which were held to be sufficiently different from "Hunyadi Janos" to distinguish the various waters before the public, the treaty with Austria-Hungary and plaintiff's prolonged hesitation to bring suit in this country. By this delay which was fairly forced upon Saxlehner, these competing waters had also become known in this country as "Hunyadi" waters, because they bore that name.

"The evidence shows that these Hungarian bitter waters were largely known in this country as 'Hunyadi' waters, and that in a certain sense 'Hunyadi' had become a general word for them. Of course, if it became such with the assent and acquiescence of Saxlehner, he could not thereafter

assert his right to its exclusive use. But as this appropriation was made against his constant protest, and as he apparently made every effort in his power to put a stop to the use of it, it ought not to be charged up against his claim that the word had become generic" (p. 33).

Having disposed of the defense of abandonment in defendants' favor, the Court proceeds to discuss the defense of laches with the conclusion that that defense was found to be established. In discussing this defense, (on page 35 to 37), the opinion first refers to the fact that after 1873 "other springs were opened whose waters were bottled under different trademarks, in all of which the word "Hungyadi" was a component, and as early as 1886 these waters found their way to the United States and were on sale here with the knowledge of the Appolinaris Company." It then states that these infringers were making use of their trademarks under licenses from the Hungarian Government and were so far acting apparently in good faith; that complainant "*as against traders who were selling bitter waters under trademarks legalized by the Hungarian Government, he should not have waited until the name 'Hungyadi' had become generic in this country and indicative of this whole class of medicinal waters.*" Finally the opinion winds up by saying:

"By twenty years of inaction she has permitted the use of the word by numerous other importers, and it is now too late to resuscitate her original title" (page 37).

The reference to twenty years of inaction was due to oversight. It was in fact ten years of inaction and this appears from the opinion because these waters were not imported into the United States until 1886, while complainant's suits against the Eisner-Mendelson Company and others were

instituted in 1896, immediately after the passing of the amended trademark laws in Hungary. However, as to that group of defendants, the decision finally held that they could not be enjoined on account of complainant's delay in proceeding against them and because they enjoyed the protection of the treaty with Austria-Hungary.

It will be seen from the foregoing quotations from the opinion that what this Court decided was that "Hunyadi" had in a certain sense become a generic description for that whole group of Hungarian bitters waters, for which under sanction of the Hungarian Government names had been adopted employing the word "Hunyadi" as a part, and which had been imported into this country and here sold by the importers in good faith, so far as the use of the name was concerned. Instead of pointing exclusively to Saxlehner's "Hunyadi Janos" water, the name "Hunyadi" was thenceforth an indication that the water sold under such a title was one of those natural Hungarian bitter waters, bearing the name "Hunyadi" with some distinguishing suffix.

This is very different from deciding that the name "Hunyadi" had been abandoned by the complainant to the public, or that it was a name of any aperient mineral water, whether natural or artificial, whether coming from Hungary or elsewhere, or that it had lost all meaning and could be used with impunity by anybody for anything.

There was no evidence or any contention in that litigation against the importers that the name "Hunyadi" had become a generic name for aperient bitter waters generally. That contention could not be made, because all through that litigation it appeared, as it has also appeared from the evidence in the present case, that no aperient water has ever been called by the public in this country "Hunyadi" water, except when that name was used to-

gether with some suffix on a label to designate it as one of those Hungary bitter waters.

All the witnesses agree that the Hungarian bitter waters named "Apenta" or "Victoria" or "Rakoczy," although they come not only from Hungary, but from Budapest, have never been called "Hunyadi" waters, which term has only been used as a short abbreviation for those which employed "Hunyadi" as part of the name. (See Bodemann, Record, page 65, x-Q. 128; page 66, x-Qs. 140 to 146; page 68, x-Qs. 164 to 165; Fennel, page 72, Qs. 3 to 4; Greyer, pages 95, 96, Q. 38; page 120 x-Q. 178; Clark, page 127, x-Qs. 31 to 32; Sander, page 136, x-Qs. 63 to 64.)

"Apenta," a competing Hungarian bitter water sold by the Apollinaris Company comes from a field adjoining the "Hunyadi Janos" property, but would never be sold by any druggist as "Hunyadi" which, according to common acceptance, means "Hunyadi Janos." With the suppression of the fraudulent blue and red labels of the other competing "Hunyadi" waters in this country, those waters have practically disappeared and "Hunyadi Janos" is again substantially the only water which is bought and sold and known in this country under the name "Hunyadi" water.

Albin Trojan, complainant's agent, testified:

"Q. 35. Are there still any other natural 'Hunyadi' waters other than the 'Hunyadi Janos' water, and coming from Hungary sold in this country?"

A. There have been two kinds of 'Hunyadi' water, one 'Hunyadi Matyas' and another 'Hunyadi Lajos,' but they have no sale any more.

Q. 36. I understand you then that the 'Hunyadi' water which is sold in this country at the present time is almost exclusively 'Hunyadi Janos' water?

A. Yes." (Record, page 23 to 24.)

This was not contradicted.

Again, all the witnesses agree that all the other aperient waters known, such as "Pullna," "Rubinat Condal," "Pluto," and whatever their names are, are not called by the trade or public "Hunyadi." It may, therefore, be unqualifiedly said that the evidence in this case fails altogether to establish the contention put forth in the defendants' answer, that the name "Hunyadi" has become public property both in Hungary and in the United States. If that was the fact, anybody could use it for any purpose, and then it would be useless even to these defendants. But apparently it is not. The word "Hunyadi" is not used in the same sense, for aperient waters, as "Cologne" is used for any kind of perfumed essences, but indicates to the entire medical profession as well as to the public, the natural bitter water of the complainant, imported from Hungary, or else one of the other Hungarian natural bitter waters bearing the name.

Hunyadi Has Not Become the Name of an Artificial Water in This Country.

Defendants pleaded in their answer to the complainant that prior to the introduction of Saxlehner's bitter water in the United States, artificial Hunyadi Janos water has been extensively manufactured in this country, which manufacture still continues.

The evidence on the matter of manufacturing artificial Hunyadi or artificial Hunyadi Janos in this country is exceedingly meager and shows, at best, only sporadic attempts made from time to time to manufacture artificial Hunyadi Janos water upon the prescriptions of physicians. There is no continuity in those undertakings, the amount of water so made was exceedingly small, as con-

trusted with the large and general sale of the natural water, nor do these attempts appear to have come to the knowledge of the petitioner or her husband, except recently. Whenever they became known to the complainant, a protest, and if necessary, an action in the courts invariably followed, with the result that they were stopped in each instance, except the manufacture carried on by the defendants.

Defendants' witness, Bodemann, testified to the manufacture of an artificial Hunyadi Janos water by Moench & Reinhold at Chicago between 1868 and 1871. His testimony given in the previous litigation against Thackeray was disregarded by the courts, is greatly weakened by the conflict with between his present sayings and his former testimony (see Record, p. 59) and is exceedingly indistinct. He is the only witness to his story, is unable to produce any specimen or any label used by those druggists, and testifies that this manufacture ceased with the Chicago fire. If done at all, it was evidently done on a very small scale at the request of one or more physicians, but as we have no evidence concerning the quantities of water so made and labeled, or the precise contents of the label, nor as to the purchaser or purchasers, the evidence is without any value to establish any defense of general public knowledge of the fact.

Nor does it establish that the artificial Hunyadi Janos water was sold in this country before the natural water made its entrance here, especially in view of the testimony of defendants' other witness, Enno Sander, that he had known the imported Hunyadi water as long as he had manufactured mineral water, and that he sold it in his drug store fifty years ago and before he sold out the store in 1868 (Record, p. 129, Q. 6, and p. 136, x-Qs. 65-67).

Bodemann also says that beginning in 1869, he

has on various occasions made Hunyadi water from formulæ given him by physicians, because the natural Hunyadi water was not then to be had in this country. Again, he fails to produce or describe the label, if he used any label, on such water, the quantities and the purchasers and stands entirely uncorroborated in his claim. Admitting it to its fullest extent, it would have no force as evidence of any public custom of selling and buying artificial waters under the name. It is exceedingly unlikely that anybody should manufacture artificial Hunyadi water in this country previous to the introduction of the natural water, as a demand for the commodity could only be established by the sale and consequent knowledge on the part of physicians of the natural water, and Sander's testimony of the sale of the natural water by him in those years is more probable, and coming from the defendants' own witness, binding upon the defendants.

Defendants' witness, Enno Sanders, testified that he had manufactured an artificial aperient water which he labeled "Hunyadi Janos Ofen Bitter Water" twenty years ago, but upon looking over his papers, could not find any printed evidence before 1886, a catalogue. Asked to what extent he bottled and sold this water, he testified: "A. I cannot tell you. And in fact I do not know whether I kept an account of that water, as I did of others I sold a great deal of. I manufactured bitter waters of my own composition and sold Hunyadi Janos only when it was called for."

* * * * *

"Q. 16. Did your manufactured water resemble the natural Hunyadi Janos when so produced? A. I think not, because the water I manufactured was carbonated, while the natural water had no carbonic acid in it." (Record, page 130.)

It further appeared that when made acquainted with the protest of Mrs. Saxlehner against this wrongful use of her trade mark "Hunyadi Janos," he promptly discontinued this manufacture and adopted the name "Relief" for a similar water then compounded and sold by him. He further testifies that the name "Hunyadi" is not the name of any chemical compound and that there are many other natural aperient waters coming from Hungary which do not bear the name Hunyadi, one of them, the Apenta Water, even coming from Kehlenfeld, the same vicinity from which comes the Hunyadi Janos Water. (Record, pages 132-136.)

The Petitioner Has Always Been Solicitous in Suppressing the Use of the Hunyadi Name on Any Artificial Products.

Whenever the complainant obtained any knowledge of such sales, she at once protested and used the utmost diligence in suppressing them with the result that they have all been discontinued. The first of these steps was her suit against Armstrong Manufacturing Company, manufacturers of a product called "Granular Effervescent Hunyadi," which was ended by the entry of a final decree enjoining it in June, 1898 (Record, page 42).

Next came a suit against the Hunyadi Salts Company in St. Louis, making an artificial product called "Hunyadi Salts," which was also finally enjoined (Record, page 22).

Another suit had to be brought against the Consumers Company in Chicago, making an artificial water which was called "Hydrox Hunyadi Water." This case was also ended by the entry of a final decree of injunction in favor of complainant (Record, page 44). The entry of a final decree by consent in this case was owing to the decision of the complain-

ant's litigation against Thackeray in Chicago, who manufactured the water called "Hunyadi Geyza." The facts in the Thackeray litigation are concisely stated in opinion of Judge Kohlsaas, delivered in deciding the case in the Circuit Court and reprinted on page 155 of the record. The defendant Thackeray contended that the term "Hunyadi" had become public property, simply meaning a bitter cathartic water, and insisted that under the decision of this Court in the Hunyadi cases, 179 U. S., 19, the said term had become a generic name for waters of this character, whether natural or artificial.

Judge Kohlsaas held that under the reasoning of *Flower Mills Company vs. Eagle*, 86 F. R., 608, the complainant or any other proprietor of springs in Hungary from which are obtained these bitter waters, is entitled to an injunction against defendants, prohibiting the use of the word "Hunyadi" in the manner the same is used by the defendant and enjoined the defendant "*from the use of the word Hunyadi as a designation for manufactured mineral water, and also from the use of the said word in any manner in connection with manufactured mineral water, without in each instance plainly designating such water as an artificial and manufactured product*"; and also enjoined the use of the name "Hunyadi Geyza" and the simulating bottle and label.

This decree was thereafter affirmed by the Circuit Court of Appeals for the 7th Circuit, whose opinion is reported as *Thackeray vs. Saxlehner*, 125 F. R., 911.

What was true of the Thackeray case is also true of the present case, namely that defendants, in each case, took up the manufacture of other artificial Hunyadi waters **after** the complainant had in 1896 vigorously commenced to assert her rights and after she had, in January, 1897, commenced her litigation against the importers.

The Defendants' Manufactured Product Is Not Artificial Hunyadi Water.

Hunyadi Janos is a natural mineral water formed in the earth by processes wholly unknown and which we can only surmise more or less distinctly. Like any other natural product, it is subject to changes brought about by different conditions of the atmosphere and the soil, as they work together in an ever-continuing process.

At different times, the Hunyadi Janos water, as it is found in complainant's establishment, has been analyzed by leading chemists of Europe, among them Professors Liebig, Bunsen, Fresenius, Liebreich, Ludwig and others, whose analyses of the water made during the last forty years, differed from each other both in the constituents of the water and also in the quantities of these constituents. Some of the later analyses, for instance, show strontium and other minerals in slight quantities, which escaped the research of former analysts, or did not exist in it then. The amount of the constituent elements in solution also varies with different atmospheric conditions, the water being more heavily charged in times of great dryness. This is one of the reasons why it is impossible to put before the public a uniform product as truly representing natural Hunyadi Janos water offered in the market, but it is not the only reason.

A short review of the scientific testimony adduced by both parties to this controversy, establishes beyond a doubt, that in the present condition of science and with the means at hand, it is impossible to artificially make a water which will have the same chemical composition and condition and the same therapeutic effects which the natural water has. The defendants boast that the presence of an ample overcharge of carbonic acid gas ren-

ders the defendants' water *more* active, more digestible and more pleasant than the natural water, but the fact is admitted by all chemists who have testified in the case that the defendants' water **cannot be artificially made except in the presence of a supercharge of free carbonic acid gas**, and defendants' claim of superiority is, therefore, not based upon any need of improving the natural product, but dictated by the needs of the imitator. There are some elements in the natural Hunyadi water, like calcium and others which cannot be dissolved and held in solution except in the presence of free carbonic acid gas. The defendants' water is highly charged with such free carbonic acid gas, and it is admitted that it must be so, because these chemical constituents, added to the mixture of other soluble materials, cannot be otherwise held in solution.

Defendants' witness, Charles T. P. Fennel, discussing the ingredients shown in Fresenius' analysis of the Hunyadi Janos water, which the defendants pretend to follow, testified that calcium bicarbonate (the fourth ingredient) *per se* cannot exist and can only be held in solution and be produced by the presence of free carbonic acid gas. Again, that the 6th ingredient, calcium sulphate, is soluble but very slightly "and I doubt whether this quantity (of the analysis) would remain in solution without the presence of free carbonic acid gas. The next ingredient (ferrous bicarbonate) *per se* is insoluble in water and can be held only in solution by free carbonic acid gas." (Record, page 76, Q. 36.)

The defendants' water is highly charged with free carbonic acid gas and it must be so charged, because these chemical constituents added to the mixture of other soluble materials cannot be otherwise held in solution.

Now the natural Hunyadi Janos water is not like

the defendants' artificial product, an aerated, sparkling water, but is a still water. It may, at times, contain some carbonic acid gas, but at other times does not and under all circumstances, the quantity thereof would be very slight. Fennel testifies that he found it to be present and also to be absent in the natural Hunyadi Janos water. (Record, page 77, Q. 40). Enno Sander, another witness for defendant, says the natural Hunyadi Janos water had no carbonic acid in it. (Rec., p. 130, Q. 16.) In the handling of the natural Hunyadi Janos water, no precautions whatever are taken to preserve any existing carbonic acid gas, but it is led into large cisterns where it accumulates and stands in the open air until the water has reached the required density, and upon opening a bottle of Hunyadi Janos water, there is no indication of any gas pressure at all. And, yet, how is it that these ingredients described by Fennel, which can only be held in solution in the presence of free carbonic acid gas (when we make the water) continue to be held in solution in the natural water without the presence of any such gas?

The chemists give us no answer to this question. The remarkable fact is that in the natural water these same constituents are found by analysis, not as a deposit or precipitate of some kind, but held in some way in solution and with that we touch upon one of the secrets of nature, which science has not been able to penetrate thus far. While the analysts may, by evaporating the natural water, find its solid constituents, and by analysis thereof, compute how much magnesium, calcium, potassium, sodium, etc., are contained in the residue, **they do not find how these constituents are combined with each other in the natural water.** No analysis and no experiment of any kind can teach us that

combination which nature has made. In order to ascertain it the chemist has to resort to theory. The difficulties in making any exact deductions with reference to natural water are, however, enhanced by the fact that we do not know how the processes of dissolution and combination go on in the earth, whether one element will be first dissolved or another, or several at one time and in what order and in what condition they were before they were dissolved.

It must, therefore, be admitted and is admitted by the chemists who have been examined in the case that, while we do know what chemical constituents are contained in the water, we do not know how they are combined in the water, except that they are all held in solution, and this under conditions (without the presence of a surplus of free carbonic acid gas) which we cannot imitate artificially.

Defendants' witness Fennel testifies:

"x-Q. 103. If you take only the ingredients of the Fresenius analysis and water, do you produce a water like Hunyadi Janos? A. If you take the ingredients as given in quantity by the Fresenius analysis with water in the proper proportions with or without carbonic acid gas, you most emphatically do not get Hunyadi water.

x-Q. 104. Why not? A. Because the substances would react amongst themselves and produce new compounds which would have no bearing to the original substances, as given by the analysis.

x-Q. 105. Does the Hunyadi Janos, the natural water of the complainant, contain chemicals in solid form? A. In bottles, or the water emanating from the spring, contain no solid chemical substances, in suspension.

x-Q. 106. Are all the chemicals stated in the analysis of Fresenius contained in the natural Hunyadi Janos water in liquid form? A. I can't

say whether in the liquid form or not; the presumption is that a mobility of the molecules is necessary to produce solution.

x-Q. 107. This, however, is merely a hypothesis, and is not stated by you as an ascertained fact, is it? A. In order to explain natural phenomena, we must assume a certain constitution of matter, and these assumptions are hypothetical and are in a measure verified by a collection of different observed phenomena, but they are not indisputable." (Record, pages 82-3.)

He also testified that several analyses which he made of Hunyadi Janos water showed results differing from the analysis by Fresenius followed by the defendants, (record, pages 81-82), and that the analyses of the natural water made at different times by Fresenius, Ludwig, Bunsen and Liebig differed, those of Bunsen, Ludwig and Liebig showing strontium and calcium bicarbonate in the water, while the analysis of Fresenius does not show these two substances. (Record, page 87).

That nature works in a manner unknown to science, is also shown by the facts stated by Dr. Crooks in his treatise hereinafter referred to, that many natural waters containing only the slightest amounts of lithium or arsenic have strong therapeutic effects ascribed to these substances, which, if added artificially to water in the same quantities, would have no effect at all. The reason for this probably is that these substances are so finely subdivided and so combined in natural waters, by the processes of nature, that they affect the human system many times more powerfully than in an artificial mixture.

The foregoing, and a short synopsis of the other evidence on these points, will satisfy the Court that on these matters there is no conflict and that the defendants' claim that their artificial water is of the same character and composition as the natural

Hunyadi Janos water **is wholly disproved by the evidence.** Defendants' witness, Enno Sanders, testifies that his artificial Hunyadi Janos water *did not resemble* the natural Hunyadi Janos water because it was carbonated, while the natural water had no carbonic acid in it; that the use of carbonic acid gas is necessary in making the artificial water to obtain a thorough solution and the pressure of 30 pounds of gas is necessary for this; that no such gas pressure is found in the natural Hunyadi Janos water; that it is unknown in what condition the various chemical ingredients are contained in the natural water, it being only surmised (Record, page 135, also 130).

Defendants' witness, Julius Greyer, testifies that chemical research has not yet shown how the various chemical elements are combined in suspension in the natural Hunyadi Janos water (Record, page 108, x-Qs. 81-83). That in the natural Hunyadi Janos water, all the chemical elements are in solution and that it contains organic matter which is not described in the analysis of Fresenius or contained in the artificial water (Record, page 110). He agrees with Fennel that waters found at different places in the earth may be different in effect, although they may show the same chemical analysis (Record, page 114, x-Q. 147). Fennel had also testified that there is a vast difference between natural rain water and distilled water (Record, page 88, x-Q. 150) thus admitting the intrinsic difference between the defendants' product, which is made of distilled water and complainant's natural water which depends upon rain water. Fennel is of the opinion that the organic substances in the Hunyadi Janos water most emphatically affect the saline constituents of the water (Record, page 88), and that the chemical constituents do not alone constitute the therapeutic properties of a water.

Complainant's witness, John C. Sparks, an analytical chemist, testified that there is no method known to science by which the exact manner in which the different chemical constituents are combined or act upon each other in a natural water, can be ascertained (Record, page 61); that two waters may show the same chemical analysis and yet be wholly different in their combination, physical properties and therapeutic effects (Record, pages 33 and 35) and that consequently the maker of an artificial water could not be sure whether his product was essentially the same or not, as the natural product which he ventured to imitate. He offered in evidence several scientific standard works from which he quoted and by a stipulation entered upon the record, full opportunity was given to the defendants' counsel to introduce such other parts of the same works as might explain or qualify these extracts.

The extract from Complainant's Exhibit "The Mineral Waters of France," by Jacquot & Willm, says:

"The arrangement of the elements is evidently hypothetical, because we know up to this time of no accurate means of ascertaining the distribution, in a solution of the acids and bases, or the acid radicals and the metals (according as the dualistic or the unitary notation is adopted). These elements of the salts are undoubtedly permanently in conflict, until one cause or another brings about the elimination of this or that saline group; but one cannot draw from such elimination the definite conclusion that the group really existed in solution. If we dissolve in water two salts differing by their acid and by their metal as well, it is easy to show that the solution really contains four salts, owing to a double partial decomposition. All the acids divide all the metals among themselves, and vice versa. But the proportions in which these changes are made elude us" (Record, p. 39).

In Walton's treatise, "The Mineral Springs of the United States and Canada," substantially the same statements are contained, which we will not repeat, as the Court will read them, but thereto is added the following:

"Yet, although the chemist may have performed his work most faithfully, still there are unknown quantities that elude his search, appearing in the analysis under the designations 'loss,' 'organic matter,' or 'extractive matter.' These facts, however, only show that chemical science is not perfect" Record, pp. 39-40).

In Dr. Crooks' treatise, "The Mineral Waters of the United States and their Therapeutic Uses," attention is called to the fact that an element of mystery still shrouds the action of many waters and the good effects obtained from their use are difficult to explain. After citing the known effect in natural waters of very minute quantities of sodium, of magnesium sulfid, of arsenic, or of carbonate of calcium, Dr. Crooks says:

"These effects cannot be produced by artificially adding these substances to water. The only explanation which can be offered for the more potent action of natural waters may be found in the fact that the mineral ingredients contained in them are in a state of combination which we cannot exactly simulate in a synthetic water. The combinations presented to us by the analytical chemist, while no doubt accurate in the main, or sufficiently so for practical therapeutic purposes, are, nevertheless, arbitrary or hypothetical, and we cannot produce them as they exist naturally" (Record, pp. 40-41).

In Sir Henry Thompson's treatise on "The Preventive Treatment of Calculous Diseases and the Use of Solvent Remedies," the author, speaking of

the salts obtained by evaporation from the natural mineral waters, says:

"Having been separated by evaporation, they no longer act with the energy which belonged to them when in the state of solution which the natural spring produces" (Record, p. 41).

There was a time when analytical chemists, especially in Europe, were fond of extolling the methods of their researches to such a degree as to claim that natural mineral waters could be analyzed and, by synthesis, reconstructed so that they could not be distinguished from the natural water. That time of scientific exaggeration has passed and it is now quite generally recognized that, while science may teach us with considerable exactness, what chemical constituents are contained in a water, still this does not solve the entire problem. We all remember having learned in school the exact chemical constituents of atmospheric air, proclaimed with the certainty of an axiom, and still within the last ten years several different metals have been discovered in atmospheric air, such as argon, helium and others, and it is more than likely that water will be found to contain these and other substances which so far have escaped scientific discovery. The pretense that science can reconstruct these products is a thing of the past. It can make something like it and perhaps something which will have the same chemical constituents and reactions, as they are known at the present time, but with every decade of progress in science something else is discovered in the natural product and then chemistry tries to be quick to add this also to its artificial product, thus trying step by step to keep abreast with the better knowledge of the natural product.

In France the recognition of the shortcomings of scientific attempts in this direction have within

the last twenty years led to the final elimination in the French Pharmacopœia of the whole term "Artificial Mineral Waters." It has been recognized there that there is no justification for claiming that any natural water, more or less similarly reproduced by artificial means, should be called by the name of the natural water, even though with the addition "artificial." The leading French work on trade-marks, by Eugene Pouillet, states that the law of trade marks or trade names has also been decisively affected by the recognition of this fact and that in more modern times the maker of an artificial water is no more accorded in France the right to give to his artificial product the name of the natural water which he has undertaken to imitate (Record, pp. 46-47).

Likewise, in the great work of Count Maillard de Marafy (cited by this Court in the case of *Singer Manfg. Co. v. June Co.*, 163 U. S., 169, 199), that distinguished author says:

"Since artificial mineral water does not reproduce chemically, it might even be said physiologically, natural mineral water, the appellations given to the latter are not necessary appellations. Consequently nothing is more simple than to apply to the artificial mineral waters the practice adopted for all compounded medicaments" (Record, pp. 47-48).

The testimony of defendants' physician witnesses, Dr. Edward W. Walker, Dr. Benjamin F. Clark and Otis L. Cameron is unimportant. They find that the defendants' water is more palatable, less severe in its action and causes less nausea. They do not agree upon the therapeutic effect of the excess of carbonic acid gas contained in defendants' water.

Thus, the evidence shows that what the defendants are offering to the public, under the name of

Hunyadi on their siphons and bottles, is not only not Hunyadi, but is also in composition and character a different water. Its difference is proclaimed on the label. The defendants also claim that their water is better than that of complainant and as to that we have nothing to say. They may make it more palatable by adding anything else, but should not be allowed to sell it on the strength of the name and reputation of complainant's water.

The name "Hunyadi" is not any name for any chemical composition or any substance which the Hunyadi waters have in common and which is not shared by other aperient waters which are not named "Hunyadi."

The various Hungarian waters to which the name "Hunyadi" has been given with a distinguishing suffix are of entirely different compositions or analyses. These analyses vary as much as 100% from each other, according to defendants' witness, Charles T. P. Fennel. (Record, p. 73, Qs. 11-13.)

Defendants' other witness, Enno Sander, distinctly testifies that the name "Hunyadi" is not the name of any chemical compound. (Record, page 136, x-Q63.) No attempt has been made by the defendants to show the analyses of the different Hungarian "Hunyadi" waters and to explain any common feature or features which might characterize them as Hunyadi water in contradistinction to other Hungarian bitter waters not bearing that name. It might, on the contrary, be supposed that the "Apenta" water, which comes from the immediate vicinity of the Hunyadi Janos grounds, would have more similarity in constitution with the Hunyadi Janos water, than any of the other "Hunyadis" coming from different places and emanating from different geographical and hydrographical regions.

Defendants' witness Greyer, in answer to the question, what the term "Hunyadi" means, said: "A. The term 'Hunyadi Water' means such waters as are found around the neighborhood of Buda Pesth and were entitled by the name 'Hunyadi' with different suffices by the owners of the different wells from which they are drawn. They are characterized by approximately the same contents of the main ingredients, one or the other being more or less in concentration."

"Q. 53. What character of water would you feel entitled to call an artificial 'Hunyadi'? A. Any one which conforms to the analysis of those waters which have been named 'Hunyadi' with any of its suffices by the owners of the wells from which they are drawn." (Record, page 101).

Greyer did not produce or discuss any analyses of these various "Hunyadi" waters, and his testimony that they are characterized "by approximately the same contents of the main ingredients" is not only contradicted by defendants' witness, Fennel (above quoted), but also by Greyer's own testimony in answer to Q. 49 where he said: "*A. The Hunyadi bitter waters and the Ofen bitter waters, coming from the same neighborhood, are characteristic in the main ingredient and differ greatly from each other and among each other, in the different seasons of the year. Depending upon more or less atmospheric precipitations, they are sometimes much weaker and at other times more concentrated. The bitter waters coming from other parts are characterized by either containing much more chloride of sodium, while others are characterized in containing mostly or mainly sulphate of sodium.*" (Record, p. 100, Q. 49.)

The witness included in his answer both the waters known as "Hunyadi" and also other bitter waters coming from Budapest and known as

"Ofen Bitter Waters." His effort at finding a common characteristic of Hunyadi waters as distinguished from others not so named utterly failed, because other Buda-Pesth bitter waters, like "Apenta" and "Victoria" and "Rakoczy" share the same similarity and yet are not named "Hunyadi," while the other "Hunyadi" waters like "Hunyadi Lajos," which comes from a much more remote part of Hungary, has no similarity at all in composition.

To the maker of an artificial water, the name "Hunyadi" is, therefore, a useless term, because it does not indicate the character of the water which he presents to the public. Its meaning becomes definite and useful only by explaining which Hunyadi he desires to imitate. Now, it is characteristic that none of these imitators desire to put before the public an imitation of any other Hunyadi water, but that in every instance, it was Hunyadi Janos water, the title of which they claimed for their artificial product, and this is so although the Hunyadi Janos water as Fennel says, is not the strongest among those bearing the name "Hunyadi," but several others are considerably stronger. Is it not plain from this that the manufacturer wants to give to the public an artificial water bearing the name of that water which has acquired a wide reputation and controls a large demand, and that, by choosing the term "Hunyadi," he wants to reap the benefit of that large demand?

The existence of formulas for making artificial waters in imitation of Hunyadi is of no evidential value, as to the use of the name as a trade name, and cannot be used to substantiate the claim that the name has become a general name for artificial waters, because such formulas exist also for artificial "Hunyadis Janos," although that name is a trade mark, also for "High Rock" water which is another trade mark. (See defendants' witness, Greyer, pp. 95-98). The citation of these formulas

is a mere pretext to cover up the piratical desire of the defendants, which is made quite plain from their previous doings and the labels employed by them.

The appellees' labels and advertisements are untruthful and designed to reap the benefits of complainant's well-earned reputation.

(a) *The Prior Labels.* From August, 1897, until some time in 1900, the defendants used on their bottles a label, the words of which are printed on page 6 of the record. This label states that the "Hunyadi Janos," which in bold print was put as the name of the water upon the label, was an artificial water, but the word "artificial" was printed in much smaller and less conspicuous type than the name "Hunyadi Janos." Under this name, the defendants printed the words, "Ofen bitter water." The rest of the printed matter on this label is the same, or substantially the same, as that contained on the label for the defendants' "Hunyadi Water," found on the page preceding page 51 of the record, and as this matter is discussed more fully hereafter in connection with that label, repetition is unnecessary. There is no justification whatever for the use by defendants of the name "*Hunyadi Janos*" and the further description of "Ofen bitter water," unless the defendants may successfully contend that they have a right to put upon the market an artificial water made in imitation of any natural water and sell it as such, and under its name, affixing to the name the word "artificial." Principle and authority alike forbid any such use of complainant's trade mark or name of complainant's commodity.

(b) *New Labels.* The defendants' changed label appears in two specimens in front of page 51 of the record, one being intended for use on siphons and

the other on bottles. In their main features these labels are alike so far as this controversy is concerned. In both of them the name "Hunyadi" is printed in the middle part of the label in prominent characters, much larger and much more conspicuous, than anything else which appears upon the label and at a distance nothing will probably be read by the purchaser except the name "Hunyadi." On the siphon label, the words "carbonated artificial" are printed in such fine print that they will be hardly read, unless the label is closely scrutinized. Again the words, "conforming to Fresenius' analysis of the" under the name "Hunyadi" are put in such small print that they are made out with difficulty, so that the result is that the word "Hunyadi" in the middle is the conspicuous attraction, after which in point of size of print come the description "W. T. Wagner's Sons" over, and "Hunyadi Janos Springs" under the word "Hunyadi."

On the bottle label, the word "artificial" is somewhat more conspicuous, but inferior in size and thickness of print to the name "Wagner's" and very much less prominent than the name "Hunyadi," which is put most conspicuously in white block letters upon a dark background. All the rest of the label will only be read upon a careful examination of its contents.

(c) *Defendants' Street Car Advertisement.* This is found between pages 248 and 275 of the record and shows in large green print the words "Wagner's Hunyadi." The advertisement does not say that the water offered is an artificial water; it does say in print of smaller size that it is "preferable to the natural, more palatable, more digestible, more effective," but all this may mean **that the defendants have treated natural Hunyadi water in such way as to give it these superior qualities.**

These Labels and Advertisements are Untruthful.

That all the defendants' labels point directly to complainant's "Hunyadi Janos" water, although using the name "Hunyadi" in order to evade the obvious charge of infringement by employing the full name "Hunyadi Janos," is shown by the words, following the name "Hunyadi" — "conforming to Fresenius' analysis of the Hunyadi Janos Springs." What else is this but saying that this water is artificial Hunyadi Janos water? It certainly does not pretend to be artificial "Hunyadi Matyas" or "Hunyadi Lajos" or anything else, but artificial Hunyadi *Janos* water. The words "carbonated artificial Hunyadi" on the siphon label can correctly mean nothing, but that this is the genuine Hunyadi Water artificially carbonated by the defendants, that is, charged with carbonic acid gas, for as we have above shown, Hunyadi water cannot be artificially made. Even accepting the words in the sense which the defendants put on them, they declare an untruth, because the water in defendants' bottles or siphons is not Hunyadi nor is it "artificial Hunyadi." We should think that if the principle should be sound that the maker of an artificial product may use the name of the natural product sold by another, if he prefixes the word "artificial," common sense must demand that the two products must be the same. If they are not the same, then the use of the name involves an untruth to the damage of the public and to the damage of the person who rightfully uses the name. The defendants' product, however, is admittedly different, because it is claimed to be more palatable, more digestible and more effective. If all that is true, the defendants' product does not deserve, nor should it be burdened with the name Hunyadi to its disadvantage, but should be sold as the defendants' superior own production.

That the defendants intended from the start to make use of the great reputation of complainant's water is shown by the fact that for three years, beginning with 1897, they used complainant's trade mark "Hunyadi Janos" boldly on their labels, price lists and catalogs. Their great show of virtue will not avail them in the fact of that bold imposition, continued for two years after Saxlehner's protest, and in view of the fact that the defendants also are selling an artificial water made by them, which is labeled "Natural Selters" (Greyer, Record, page 119, Qs. 170-174).

In this connection we invite the Court's attention to the defendants' price list, Exhibit B, dated September 1, 1897, and which was in use until May, 1899, according to defendants' answer (See Record, pages 6 and 7, also page 17, Paragraph II.). The heading of the price list is "W. T. Wagner's Sons, Diamond Mineral Spring and Table Waters, 1926 Race Street, Cincinnati," then follows a number of names of waters until we come (on page 7) to "Hunyadi Janos (Ofen Bitter Water), in pints per dozen \$1.20." The price list does not say that the waters are artificial waters but says "Diamond Mineral Spring and Table Waters." Surely the product offered by the defendants does not deserve the name of a mineral spring water. Under that name we understand a water coming from a mineral spring.

The second price list of the defendants, revised November 1, 1902, (see Record, page 50, f. f.) shows a change of heart by using the word "artificial" on the title page, but this was nearly two years after the commencement of the suit, and by examining other publications of the defendants, the Court will find that the name "Hunyadi" is used in such a way as to tend to become gradually the name of the water without the word "artificial" added thereto. Thus we find in complainant's exhibit—defend-

ants' second pamphlet,—(Record, page 210,) the following:

“WAGNER'S HUNYADI.

Produces a rapid action of the bowels. It never causes cramps and is easily borne by the stomach. It is highly carbonated, thus making it less nauseating than any of the natural Hunyadi waters. In a word it is The Best Purgative on the Market.”

Again in complainant's exhibit, defendants' catalog of 1901, we find (on Record, pages 236 and 237) the following:

“BITTER WATERS.

The name ‘Bitter Water’ has been adapted from the German, and is given to those waters which contain large quantities of solid ingredients, composed mainly of alkaline and earthy sulphates; they rarely contain free carbonic acid gas. Their taste is salty, bitter, disagreeable and often nauseating.”
* * *

“Carbonated artificial bitter waters are superior to the imported so-called natural waters in every respect. * * * The following belong to the class of bitter waters: Pullna, Kissingen Bitter and Hunyadi. * * * Pullna is as strong as the Hunyadi Bitter Waters WHICH ARE OF VARYING COMPOSITIONS.”

After giving an analysis of Pullna, and of Kissingen bitter water, the pamphlet continues on page 238 as follows:

“HUNYADI (OFEN BITTER WATER)

Analysis by Fresenius of Hunyadi Janos Springs.”

(Then follows an analysis)

“Hunyadi Janos, as well as the large number of Hunyadi Bitter Waters have (provided they are not manufactured) their origin in the Kehlenfeld, a plain near Ofen,

surrounded by the Adlerberge and bounded by the Danube in the East. This plain seems to consist of a bed of marl eighteen or twenty feet deep, which contains earthy alkaline sulphates, and is underlaid by an impervious bed of clay. All the wells dug into the marl fill up with bitter water of varied strength, dependent upon the situation of the well and the atmospheric precipitations on the Adlerberge.

The effects of Hunyadi Janos do not differ materially from those of other bitter waters, hence we refer our readers to that which has been said under Bitter Waters, and also under Püllna and Kissingen Bitter Water.

The so-called 'Natural Hunyadi Janos' in the market is a mixture of the waters of over one hundred different wells, all belonging to the estate of Andreas Saxlehner. We maintain that such a mixture of waters from different wells is not deserving of the title 'Natural,' and although Hunyadi Janos is mixed in such a way as to possess a uniform density, **it varies constantly in its chemical composition.**

Wagner's Artificial Hunyadi is manufactured to conform to the above, the standard analysis by Fresenius of Hunyadi Janos.

Our Hunyadi being highly carbonated is more pleasant to the taste and much easier borne by the stomach than any of the natural waters. It is prescribed and recommended by eminent physicians, with most excellent and satisfactory results.

Our Hunyadi is put up in siphons (32 oz.), six in a case, per case, \$8.60.

In pint bottles (16 oz.) one dozen in a case, per case, (1.20)

Rebate for case and bottles, 20 cents."

The slur which these defendants cast upon the natural Hunyadi Janos water as not being a natural water, because collected and brought together from numerous wells, has been entirely disposed of by the previous decision of this Court. Nor is there

any justification for the defendants putting an old analysis of Fresenius up as a standard of the natural water, while the evidence shows that the water for many years has been different, has contained different ingredients not mentioned in Fresenius' analysis, and has been more like the analyses of other eminent chemists long after the death of Fresenius. We have here the admission of the defendants that the effects of Hunyadi Janos do not differ materially from those of other bitter waters. If that is true, what object can there be in putting the name "Hunyadi" upon the artificial water of the defendants, instead of some other name descriptive of the water, unless the defendants seek to gain from the enormous reputation of the Hunyadi Janos water? They are thus endeavoring to establish before the public two different standards of what is Hunyadi, where at the present time that word has only one meaning and denotes its origin in Hungary.

The inevitable consequence of that attempt, if allowed to pass by the Courts, will be that as on the street car sign, the defendants' water will become known as "Wagner's Hunyadi," not as "Wagner's Artificial Hunyadi," but simply "Wagner's Hunyadi." That is what the street car sign says and soon the public will know a number of additional Hunyadis simply distinguished by the names of the particular makers who put them upon the market. The incentive to imitating defendants' conduct is given by the much cheaper price of production, the natural water on account of cost of transportation, duty, and necessary advertising, commanding a price of 25c per bottle and often 30c or 35c in places inland.

Defendants, like most other manufacturers of artificial waters, wish to educate the public into the belief that "natural waters are worthless away from the spring and artificial waters the only ones

that should be patronized by sensible people." (Sander, Record, page 129, Q. 10.) But millions of consumers of Poland Water, White Rock Water, Apollinaris, Hunyadi Janos, Aparenta and other well known natural waters are of different opinion, and a mere desire for lucrative business should not be a justification to the manufacturers of artificial waters, made by the use of marble dust and sulphuric acid, to enjoy the benefit of the great popularity of those natural waters.

There is no reason, if the defendants are permitted to use the phrase "artificial Hunyadi, made according to the analysis of the Hunyadi Janos Spring," why they should not be permitted to use the name "Artificial Hunyadi Janos." They mean the same thing. Both use the name of complainant's commodity to say to the public that defendants offer the same water, but artificially made, or artificially carbonated. If one constitutes an unfair use of complainant's trade name, the other does. To contend for a different is to substitute technicalities for plain, sound reasoning.

If the word Hunyadi shall be allowed to the defendants, the door will be opened to wholesale fraud.

If it is once admitted that the defendants have the right to name their water "artificial Hunyadi, although it is a different product, and has nothing in common with the complainant's product, not even chemical identity as to analysis, where are we to stop short in allowing the use of the name to other manufacturers? What is to be the criterion by which the fraudulent manufacturer will be distinguished from the honest imitator? Where the defendants use distilled water, some other manufacturer will take ordinary river water or rain water, because it is cheaper. Is the distilled water

in character any nearer to the natural Hunyadi Janos water than the ordinary river water taken by another manufacturer? Does not defendants' witness Fennel himself admit that there is an "enormous difference between rain water and distilled water"? Again, where the defendants follow the old analysis by Fresenius which does not contain all the substances now found in Hunyadi Janos water, nor those substances in the same quantities or proportions, another manufacturer will follow some other analysis or follow none at all, but make up his own mixture which may be more or less similar. It would fall to the Courts of this country to investigate each water so artificially made to which the name "Hunyadi" was given for the purpose of establishing whether it could or should be fairly called a Hunyadi water or not, a function which the Courts are unable to perform.

There certainly is no need of conceding to the defendants as manufacturers of artificial waters, any right of naming their products by the names of the original substances, because if such a need existed, then the defendants would have the right to make and sell "Artificial Hunyadi Janos Water" and every other known substance whether the same be protected by any trade name or not. No such principle is recognized in the realm of trade-mark law. Neither is there the slightest difficulty in naming the defendants' water in such manner that its peculiar characteristics are apparent to the purchaser. Dr. Sander found no difficulty in disposing of his artificial water after he had changed the name "Hunyadi Janos" to the name "Relief." The proper name for defendants' product, securing to them all the advantages from their efforts as chemists, is

"WAGNER'S ARTIFICIAL APERIENT (OR BITTER)
WATER."

followed by descriptive matter or an analysis.

The immediate consequence of permitting the use of the name "Hunyadi" as a name upon an artificial water will be that manufacturers of mineral waters will make their own compositions which will be sold at soda fountains, over the counter, and will thus in a short time establish a large trade for artificial waters under the name "Hunyadi." It will be a perfectly legitimate trade if the bottle, which is usually not seen by the purchaser, is marked with the word "artificial," and the public will have to take what they get upon demanding a glass of Hunyadi. No such condition exists at present, owing to the persistent fights of petitioner for her rights, but it is sure to come, unless the all-important principle is decided by this Court in her favor.

Argument from the Authorities.

I.

That the name of a spring and the water bottled therefrom is protected, according to principles applied to trade-marks in general, is well established in this country.

Congress and Empire Spring Co. vs. High Rock Congress Spring Co.,
45 N. Y., 291.

Apollinaris Co. vs. Scherer, 27 F. R.,
18.

Hill vs. Lockwood, 32 F. R., 389.

Dunbar vs. Glenn, 42 Wisc., 118.

City of Carlsbad vs. Thackeray, 57
F. R., 18.

Northcutt vs. Turney (Ky.) 41 South
West. Rep., 21.

Hunyadi Cases, 179 U. S., 19.

It is a familiar doctrine and so held all over the United States, that the question whether defendant's water has the same constituents and properties as the plaintiff's, is immaterial, also that the addition of the word "Manufactured" or "Artificial," and of the defendant's name and address does not excuse the defendant.

In the case of *City of Carlsbad vs. Thackeray*, above cited, the defendant had, much more distinctly, than in the present case, applied the word "artificial" to his product and claimed immunity on that score; but it was held that this was no defense at all.

Nor is it any answer to complainant's claim that by the decision of the Supreme Court she is no more the only person who has the right to apply the name "Hunyadi" to the bitter water of her establishment as an exclusive trade-mark, but that this name can also be used by other owners of similar springs in Hungary upon their products. The conclusive reply to this contention is that defendants' product does not come from any such spring. It is neither natural nor from the locality, nor imported, but a Cincinnati home-made carbonated water. Besides, the complainant has still a valuable interest in the name "Hunyadi," although she may now share the benefit of its reputation with others similarly situated. Trade names which are used in this manner ~~are~~ protected upon the same principles which apply to trade-marks proper, as against those who have no right to apply the name to their products. Even as to trade-marks, it has never been held that the right of the owner must necessarily be a sole right to the use of the trade-mark, because upon the dissolution of a partnership the several partners, each have the right to use the mark, and likewise, upon the death of the owner, his heirs or next of kin inheriting the mark have each such right to its use in their sev-

eral establishments. All that the law requires is such an exclusive right in the plaintiff as will exclude the defendant from its use.

In the case of *Northcutt vs. Turnay*, above cited, the word "Blue Lick" water was applied not only to the spring owned by the plaintiff, but also to the water of another spring in the same geographical region owned by another, who was not a party to the suit. It was held that this fact made no difference, but that as against the defendant, whose water was not properly named "Blue Lick," the plaintiff was as much entitled to an injunction as if he had been the exclusive owner of the name.

The law is well settled that such names, which can be properly called geographical names, can only be legally used by those whose products come from the geographical region in question.

Neuman vs. Alford, 51 N. Y., 189.

A. F. Pike Mfg. Co. vs. Cleveland Stone Co., 35 F. R., 896.

City of Carlsbad vs. Kutnow, 71 F. R., 167.

Pillsbury vs. Eagle, 86 F. R., 608.

Anheuser vs. Miller, 87 F. R., 86½.

California Fruit Cannery Ass. vs. Myer, 10½ F. R., 82.

American Waltham Watch Co. vs. United States Watch Co., 173 Mass., 85.

Morgan Envelope Co. vs. Walton, 82 F. R., ½69.

Key West Cigar M. Ass'n vs. Rosenbloom, 171 F. R., 296.

Siebert vs. Gandolfi, C. C. A., 179 Fed. Rep., 100.

The case of *City of Carlsbad vs. Kutnow*, above cited, is particularly applicable, because there the Court held that, although by laches the City of

Carlsbad had lost its exclusive claim to the name "Carlsbad" on mineral water, still that defense did not apply to the products of such water, namely Carlsbad Salt, and the defendant was properly enjoined from making an artificial product which he called "Improved Effervescing Carlsbad Powder."

A proprietary interest in the terms or symbols used is not essential to the maintenance of any suit to enjoin the misuse of these terms or symbols. An interest in the good-will of the business or any other property threatened by such misuse is sufficient to entitle the plaintiff to an injunction.

Cohen vs. Nagle, 76 N. E., 276, 279
(Supr. Ct., Mass.).

Scriven vs. North, 134 F. R., 366, 376.

Collinsplatt vs. Finlayson, 88 F. R.,
693.

Draper vs. Skerrett, 116 F. R., 206.

Sharer vs. Heller, 108 F. R., 821,
832.

Manitowoc vs. Wm. Numsen, 93 F.
R., 196.

II.

The decisions in the controversies about the *artificial Carlsbad water* and the *artificial Vichy water* were decided upon the defense of laches, and therefore do not militate against the rule.

In the case of *City of Carlsbad vs. Carl H. Schultz*, 78 F. R., 469, the Court held that the defendant had a right to sell his manufactured water under the name of "Carlsbad Water," provided that he added to that name the word "Artificial" in the same kind and size of type as he used for the name. This, however, was under very pecu-

liar circumstances and in a case in which the defense of laches was overwhelmingly proved. The peculiar fact was that the City of Carlsbad, until about the year 1815 and commencing with nearly the beginning of the last century, had deliberately followed the short-sighted policy of preventing the exportation of any waters from the springs at Carlsbad, in Bohemia, thus compelling suffering mankind to resort to the springs themselves for the use of the waters, and thereby enriching the population of Carlsbad. In the meantime, Dr. Struve, beginning about the year 1820, had analyzed the spring water and prepared a water which had the same mineral constituents, and which he sold as "Artificial Carlsbad Water" publicly in practically all the large cities of Europe. This artificial Carlsbad water, therefore, was on the market for about twenty-four years **before** the natural water was ever sold in the market or exported, and other manufacturers, imitating Struve's example, had manufactured the same artificial Carlsbad water here in this country for about thirty-four years before the City of Carlsbad instituted its suit here. Under those conditions, the City of Carlsbad was not in a position to assert any trade-mark rights, because it had no trade during all the years while the manufactured waters had been made and sold, and as the manufactured product was on the market long previous to the time when the genuine product was ever sold (it not being sold in Carlsbad, but only consumed upon payment of a tax), the Court found that complete justice could be done by compelling the manufacturer of the artificial water to name his artificial imitation in plain terms as such, and that that was the extent to which relief should be given.

See City of Carlsbad vs. Schultz, 78
F. R., 469.

The litigation about the artificial Vichy water in this country was decided in favor of the defendant upon the ground of extreme laches and presented, like the Carlsbad case, a peculiar and extraordinary state of facts. As the Circuit Court of Appeals said, in 102 F. R., 155:

"The facts of this case, like those in *City of Carlsbad vs. Schultz* (C. C.), 78 F. R., 469, which in its main features resembles this case, are unique in their character."

Artificial Vichy water had been made and sold since the year 1820 in most countries of Europe on a large scale, the water being sold, like the artificial Carlsbad water, at public drinking places; it was also bottled, sold and consumed in enormous quantities under the general recognition that it was a manufactured water. In this country the defendant Schultz had conducted a similar manufacture for more than thirty years in New York, building up a large and lucrative business, and thus helping to establish an industry which soon spread over the entire United States and made the term "Vichy Water" a familiar term to all, **by which it lost its original meaning entirely and indicated nothing but a sparkling water sold at soda water fountains and resembling somewhat, although only remotely, the water coming from France.** Under those conditions the complainant was held barred by its own laches from setting up its exclusive claim to the use of the name "Vichy" after so many years of inaction. The facts are fully set forth in the reported decisions, which are:

La Republique Francaise vs. Schultz,
91 F. R., 500.

La Republique Francaise vs. Schultz,
102 F. R., 153.

La Republique Francaise vs. Schultz,
115 F. R., 196.

The situation between the present complainant and the present defendants, we respectfully submit, is that described by the Circuit Court of Appeals in the case of *Saxlehner vs. Thackeray*, 125 F. R., 911, from which we quote the following:

"As we read the decision in that cause, the Supreme Court held that appellee had a rightful monopoly of the use of the word 'Hungadi,' and that there had been no such abandonment as made it a generic term usable at the pleasure of any one engaging in the sale of bitter waters; but that owing to laches—her failure to bring suit against certain importers engaged in the importation of natural bitter waters from Hungary—appellee was estopped, as against them, from maintaining her suit. The defeat of appellee and the success of her opponents in the case was grounded, not upon abandonment, but upon estoppel—an estoppel growing out of the fact that the importers defending had been allowed, during the period of appellee's acquiescence, a period of nine years, to build up a business in the importation and sale of natural Hungarian waters in the markets of the United States.

But the estoppel named will not avail the appellant in the case under consideration. He was not engaged in the sale of his waters until after appellee had commenced vigorously to assert her right to the exclusive use of the word 'Hungadi.' He entered the market, therefore, with this name upon his manufactured water, not under the implied permission, but against the earnest protest, of the owner of that name."

The point made in that case by the complainant, that the defense of laches was not available to the defendants, because they had not been prejudiced by complainant's prior laches, is fully sustained by the authorities:

"One principle pervades all cases involving the defense of laches, however, and that

is, that not only must there be a seemingly unnecessary delay on the part of the plaintiff in bringing or prosecuting his action, but that by reason of some change in the condition or relations of the property, or parties, occurring during the period of delay, it would be inequitable to permit the claim of the plaintiff to be enforced."

London Bank vs. Dexter, 126 F. R., 593, 601, citing

Galliker vs. Cadwell, 115 U. S., 368.

Halstead vs. Grinnan, 152 U. S., 412, 416, 417.

Wheeling Bridge Co. vs. Reymann, 90 F. R., 189.

Demuth vs. Bank, 85 Md., 326.

As was said in the last case cited:

"There must be a legal duty to do some act, a failure to do that duty, and attendant circumstances which cause prejudice to an adverse party, before the doctrine of laches can be successfully invoked."

Or, as was said by this Court in *Halstead vs. Grinnan*, 152 U. S., on page 417, speaking of laches:

"It is an equitable defense, controlled by equitable considerations, and the lapse of time must be so great, and the relations of the defendant to the rights such, that it would be inequitable to permit the plaintiff to now assert them."

In the recent case of *Shea vs. Nilima*, 133 F. R., 209, it was said by the Circuit Court of Appeals for the Ninth Circuit: "From the record in this case, it does not appear that the relative positions of Nilima and Johansen had in any way changed to the prejudice of appellants by the delay, citing *Townsend vs. Vanderwerker*, 160 U. S., 171, 186)." The defense of laches was consequently rejected.

III.

The Court below came to differ from the opinion of the Circuit Court of Appeals in the Seventh Circuit upon the supposed meaning of this Court's decision in the case of French Republic against Saratoga Vichy Spring Co., 191 U. S., 427, saying:

"We think the plain effect of this decision, coupled with that in *Saxlehner against Eisner & Mendelson Co.*, is to hold that where the protection of a trademark is lacking, the name of the natural imported water may be applied either to a similar natural water drawn from a spring in this country, or to artificial water made according to an analysis of a foreign spring, provided the latter be of the same general character; and if artificial, contain the same chemical ingredients and properties as the imported natural water" (157 F. R., p. 748).

In our opinion, the Court below lost sight of the fact that in the Vichy litigations, it had been proved that the word "Vichy" had lost all its original meaning connecting it with the town of Vichy or the springs of Vichy, and had, instead thereof, become part of the language of the country denoting nothing but a sparkling water. In the first of those litigations which was directed against Schultz, a manufacturer of mineral waters in New York, the proof of this change of the meaning of the name "Vichy" as applied to mineral waters was brought in the most overwhelming manner. Witnesses who were called to testify that the word "Vichy" meant among our public testified "anything that fizzes" or "any sparkling water," or "any carbonated water usually sold at soda fountains." This use of the

name "Vichy" had become general through an annual consumption of many millions of glasses, siphons and bottles of the artificial Vichy waters for a period of about thirty years before the suit was commenced, a custom which was so universal as to make the attempt of the Vichy Company to claim property in the name quite hopeless. This is strongly represented in the first decision rendered in that litigation and the proofs therein were stipulated afterwards into the litigation commenced by the Vichy Company against the Saratoga Vichy Co. The fact was therefore before the Court, unquestioned and testified to from all sides in the most overwhelming manner, that the complainant, the Vichy Company, had in this country no right at all to the name "Vichy" as a name denoting its water; and the judgment of this Court was rendered upon that proof that the name "Vichy" had no meaning whatever connecting it here with the establishment of the complainant, except by the full name of the complainant, its labels and bottles.

That is a situation wholly different from that which the proofs in this case show. In the present case there is no evidence that the name "Hunyadi" has become the generally applied and accepted name for bitter water or for any artificial water whatever, but it is still connected exclusively with the complainant and those other Hungarian spring owners who have used it on their natural waters. The inference drawn by the Circuit Court of Appeals for the 6th Circuit would necessarily demand proof of such general use of the name "Hunyadi" as was proved in the Vichy case, which is not only absent in this case, but disproved by the defendants' own evidence.

Again the Court's reference to the case of *City of Carlsbad against Schultz*, 78 F. R., 469, does not sustain its reasoning. In that case also, as we have shown above, the artificial Carlsbad water had been on the market abroad and in this country for many

years before the natural water was sold therein; it had obtained reputation and become connected in the knowledge of the public with the artificial imitations seventy years before the complainant ever took any step to assert its rights to the name. Both the Vichy case and the Carlsbad case are exceptional and treated as such in the decisions, and we submit do not furnish, on the facts proved in the present litigation, any justification for withholding from complainant the relief herein prayed for.

IV.

It is no defense that the full name "Hunyadi Janos" was dropped from the defendants' labels before the bringing of the suit.

According to the defendants' testimony the name "Hunyadi Janos" was dropped about six months before the institution of the suit and the name "Hunyadi" substituted therefor. Why that change was made does not appear. No reason for it is given. The complainant was not notified of that change, which was made long after she had protested against the use of the name, and the attitude of the defendants in this case has not been that of conceding to complainant her exclusive right to the name "Hunyadi Janos," but, on the contrary, a continued defiance. That defiance is expressed in the "Murray letter" and in the defendants' answer to the bill of complaint, which denies any right of complainant in or to that name. Under those circumstances the mere fact of the discontinuance of the use of that name becomes immaterial, because the complainant had all reason to assume that it

would be used again, as the defendants claimed the right to use it, and had used it previously.

"The interposition of such an answer indicates that complainant was quite justified in anticipating that at any time in the future some infringement of such label might be put on the market by defendants."

Sarlechner vs. Eisner, 147 F. R., 189.

India Rubber Co. vs. Rubber Comb Co., 45 N. Y., Super. Ct., 258.

Low vs. Hart, 90 N. Y., 457.

Thomas G. Plant Co. vs. May Mercantile Co., 153 F. R., 229.

Hutchinson vs. Blumberg, 51 F. R., 829.

V.

Even if appellees are entitled to use the word "Hunyadi" as a name for their product with proper correctives and explanatives, sufficient care has not been taken to distinguish. "Hunyadi" is emphasized. "Wagner" and "Artificial" are inconspicuous on the label and in advertising. Both are omitted in the price list. The distinctions are insufficient.

Fuller v. Huff, 104 Fed. Rep., 141.

Hansen v. Siegel Cooper Co., 106 Fed., 691, 692.

Singer Mfg. Co. vs. June Mfg. Co., 163 U. S., 169.

Menendez v. Holt, 128 U. S., 514, 521.

Sharer v. Heller, 108 Fed., 821, 833.

Carlsbad vs. Schultz, above cited.

Baker vs. Slack, 130 F. R., 514.

VI.

That others have infringed is no defense.

In *Singer Manufacturing Company v. June Manufacturing Company*, 163 U. S., 169, it is said by Mr. Justice White (202) :

"There is an attempt in the evidence to explain this fact by the statement that it was the habit of sewing machine makers to add three figures to the actual number of machines by them made; but the proof does not sustain the explanation, and, if it did, it amounts to but the contention that the commission of a fraud should be condoned, because others were guilty of similar attempts to deceive."

As far back as 1844 in *Taylor v. Carpenter*, 3 Story, 458, Mr. Justice Story disposed of this contention, saying :

"Again, it is said that other persons have imitated the same spools and labels of the plaintiffs and sold the manufacture. But this rather aggravates than excuses the misconduct, unless done with the consent or acquiescence of the plaintiffs, which there is not the slightest evidence to establish, or that the plaintiffs ever intended to surrender their rights to the public at large, or to the invaders thereof, in particular."

And, again, 2 Wood & M., 21, Mr. Justice Woodbury said :

"It is rather an aggravation to the plaintiffs that many others have injured them as well as the defendant."

To the same effect are:

Actiengesellschaft Vereinigte Ultramarin-Fabriken v. Amberg, 109 Fed., 151.

Monroe v. Tousey, 13 N. Y. S., 79, 80.

Cuerro v. Henkell, 50 Fed., 471, 472.

Williams v. Noera, 158 Mass., 110; 32 N. E., 1037, 1038.

Celluloid Co. v. Cellonite, 32 Fed., 94.

Cohen v. Nagle, 76 N. E., 279, 280.

The decisions below were not grounded upon any supposed laches as against manufacturers of artificial waters, for which the evidence furnishes no basis whatever.

VII.

The fact, even if proven, that the artificial product of appellees is better than the genuine natural water is no justification for calling it spurious "Hunyadi." The public is entitled to the very thing it expects and cannot be deceived even for its own benefit.

Singer Co. vs. Loog, 8 App. Cas., 29.

Coats vs. Holbrook, 2 Sand. Chan., 586.

Pillsbury vs. Pillsbury Co., 64 F. R., 841.

McLean vs. Fleming, 96 U. S., 245, 252.

Cleveland Stone Co. vs. Wallace, 52 F. R., 431.

VIII.

Where a manifest liability to deception exists in defendant's use of plaintiff's trade-name, even though there be no strict trade-mark right involved therein, it is not necessary to bring proof of an actual deception.

Manufacturing Co. vs. Trainer, 101 U. S., 51.

Tuendsticksfabriks vs. Myers, 139 N. Y., 364.

Fuller vs. Huff, 104 F. R., 141.

City of Carlsbad vs. Kutnow, above cited.

Biscuit Co. vs. Baker, 95 F. R., 135.

Lee vs. Haley, 5 Chan. App., 155.

North Cheshire &c., Brewery Co. vs. Manchester Brewery Co. (1899), App. Cas., 83.

Am. Waltham Watch Co. vs. U. S. Watch Co., 173 Mass., 85.

There is nothing in the cases of *Lawrence Mfg. Co. vs. Tennessee Mfg. Co.*, 138 U. S., 537; *Coats vs. Merrick Thread Co.*, 149 U. S., 562, and *Elgin National Watch Case Co. vs. Illinois Watch Case Co.*, 179 U. S., 665, which militates against this rule, nor is the law established in this country different from that applied in England on this point, as is shown by the frequent citations of the modern English decisions and their approval by this Court. In the *Coats* case and in the *Lawrence* case the marks employed were in common use or without significance as trade-marks, while in the *Elgin* case the defendant manufactured at Elgin. In such cases proof of actual fraud in the use of that which other-

wise is open to use by defendant must be made out in order to entitle plaintiff to relief. Where, however, the fraud lies in the very use of the name to which plaintiff is not entitled, no further proof of an actual, fraudulent intent is required.

IX.

An accounting should have been decreed.

Mitchell v. Williams, 106 Fed., 168,
172.

Cartier v. Carlile, 31 Bear., 292.

Moet v. Conston, 33 Bear., 578.

Saurer v. Kellogg, 9 Fed., 601.

Atlantic Milling Co. v. Rowland, 27
Fed., 24.

El Modelo Co. v. Gato, 7 So., 23.

Hennessy v. Wilmerding-Loewe Co.,
103 Fed., 90.

The same rule applies in cases of unfair competition as in strict mark cases with respect to an account of profits.

N. K. Fairbank Co. vs. Windsor, 118
F. R., 96; 124 F. R., 200.

Walter Baker Co. vs. Slack, 130 F. R.,
514.

Lever vs. Goodwin, 36 Chan. Div., 1.

Conclusion.

We submit that the case fully establishes the right of the petitioner to suppress the name "Hunyadi" as well as the full name "Hunyadi Janos" on defendants' artificial preparation, and that she is entitled to a decree enjoining the defendants from the use of these appellations and each of them, as a name for their artificial water, and for the usual relief by an accounting.

Respectfully submitted,

ANTONIO KNAUTH and

JOHN G. JOHNSON,

Of Counsel for Petitioner-Appellant.



No. 81.

FILED.

DEC 20 1909

JAMES H. MCKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1909.

EMILIE SAXLEHNER,

Petitioner-Appellant,

vs.

EDWARD WAGNER, WILLIAM WAGNER,

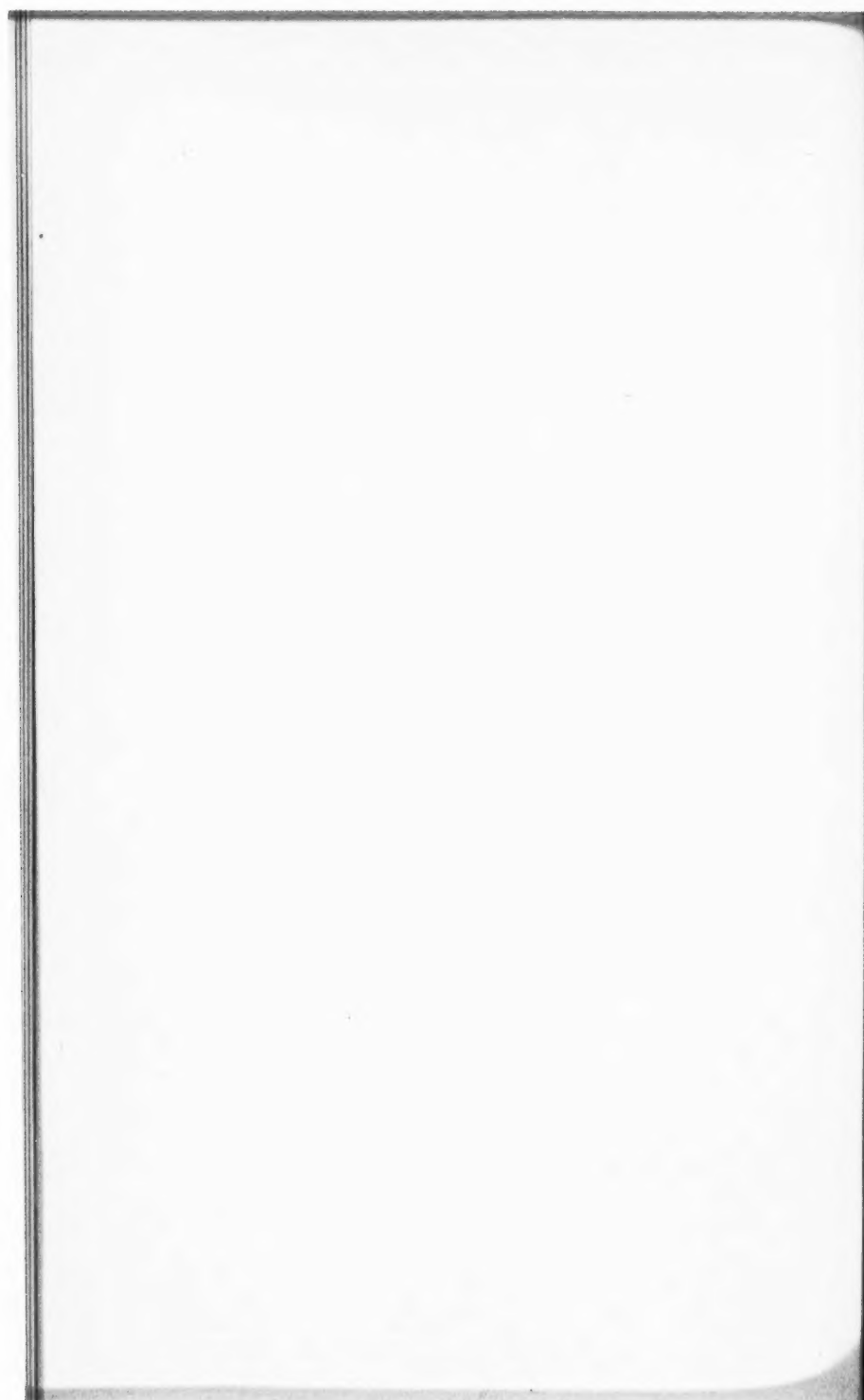
AND SOPHIA WAGNER,

Respondents-Appellees.

BRIEF ON BEHALF OF RESPONDENTS-APPELLEES.

WALTER F. MURRAY,

Counsel for Respondents-Appellees.



Supreme Court of the United States.

OCTOBER TERM, 1909.

EMILIE SAXLEHNER,

Petitioner-Appellant,

EDWARD WAGNER, WILLIAM WAGNER AND

SOPHIA WAGNER,

Respondents-Appellees.

No. 81.

On writ of certiorari to the United States Circuit
Court of Appeals for the Sixth Circuit.

BRIEF ON BEHALF OF RESPONDENTS-APPELLEES.

STATEMENT.

From the very inception of this contest practically the only issue between the parties has been the right of the complainant to prevent the defendants in using the term "Artificial Hunyadi" to designate the latter's product. This is evident from complainant's Exhibit, "Murray Letter" (p. 38), from which it is clear that had the complainant confined her claims to exclusive rights in the term "Hunyadi Janos," and had not claimed the word "Hunyadi" this suit would not have been instituted.

The Circuit Court found that complainant had an exclusive right to the term "Hunyadi Janos," but not "Hunyadi" (p. 157).

Had the complainant felt itself seriously aggrieved by the Circuit Court's decree's not conforming to the finding concerning "Hunyadi Janos," the decree could have been corrected by a simple motion to the court, and this suit would have been then and there terminated.

The Circuit Court of Appeals was of the opinion that the

"Court below granted an injunction restraining the sale of artificial bitter water under the name of 'Hunyadi Janos,' holding that such phrase constituted a trade-mark, the right to use which was exclusive in the plaintiff." (See page 252, found 3 pages from the end or record.)

Here again, had complainant been seeking an injunction upon the words "Hunyadi Janos," and not upon "Hunyadi," it is evident that such an injunction could have been had by a simple motion to the Circuit Court of Appeals, to make the decree conform to the finding of the Court.

But here again it is evident that what complainant has been seeking is not an injunction upon "Hunyadi Janos." She has sought and still seeks to enjoin defendants from using "Hunyadi," as a designation of one of the "waters" prepared by them.

Defendants in the seventh paragraph of their answer (p. 52), say:

"These defendants deny that the complainants have in common with other owners of springs in Hungary a right to have the defendants enjoined from the use of the words (word) 'Hunyadi' in the manner in which they have used it; deny that they have sold their water as that of the complainant."

The issues are: First—Complainant has no exclusive right in the use of the word "Hunyadi" to designate a water. Second—Defendants have not been guilty of any unfair competition in trade.

ARGUMENT.

This Court in the case of *Saxlehner v. Eisner & Mendelson Co.*, 179 U. S. 19-38, decided that the complainant has lost her title to the word "Hunyadi" as a trade-mark.

That such is the decision of this Court is clear;

First—From the language used in the opinion.

Second—From the decree.

Third—From later references to the case, both by this Court and the United States Circuit Courts and Circuit Courts of Appeals.

Fourth—From the decisions of the Courts, both in the United States and in England, as to the effect upon trade-mark property of inexcusable laches of the original owner, in the absence of fraud upon the part of alleged infringers.

Take up the foregoing statements in their order, we find:

First—This Court in *Saxlehner v. Eisner*, considering only the effect of complainant's laches, shows that there the defendants' adoption of the term had been devoid of fraud; viz., they had been using the term "Hunyadi" as a part of trade-marks which had been legalized by the Hungarian government; that the complainant knew of such use by the defendants and yet that she and her predecessor had remained inactive for a period of over twenty years. We read in the aforesaid case, upon page 35 of 179 U. S.

"The infringers were making use of their trade-marks under licenses from the Hungarian government and we see no reason to doubt that they were proceeding in good faith . . ."

Upon page 36, we read,

"Saxlehner knew, as a matter of fact, that the Minister of Agriculture had overruled his protest and that the word 'Hunyadi' had become public property in the Kingdom of Hungary."

Upon page 37, the Court speaking of the complainant, says,

"In now invoking our laws, his successor is bound to show that she has complied with our requirements of diligence and promptness in instituting suit. She has failed in this particular. By twenty years of inaction, she has permitted the use of the word by numerous other importers, and IT IS NOW TOO LATE TO RESUSCITATE HER ORIGINAL TITLE."

Independent of the question of laches, this Court in the aforesaid case indicated another fatal defect in complainant's title to a trade-mark right in the term "Hunyadi"; viz., that the loss of that right in Hungary worked a similar loss to complainant here, under "our treaty of June 1, 1872, with the Austro-Hungarian Empire. Upon page 36, Justice Brown says:

"In view of the decision of the Minister of Agriculture of 1873, sustaining the trade-mark 'Hunyadi Matayas,' and the subsequent adoption of the word 'Hunyadi' in connection with some other word by numerous proprietors of similar waters, it seems to be clear that the word became, and continued to be for twenty years, public property in the Kingdom of Hungary, and it is difficult to escape the conclusion that it became so here. It is true that the law of Hungary was subsequently changed in this particular and that the Courts of that country held the plaintiff entitled to that change; but it needs no argument to show that if the word once became public property here, a subsequent change in the law of her own country would not inure to the benefit of the plaintiff here. The right to individual appropriation once gone is gone forever."

Second—The decree in the case of Saxlehner v. Eisner & Mendelson Co. indicates that this Court found that Saxlehner had lost her title to the word "Hunyadi." The decree grants an injunction solely against the use by defendants of bottles

and labels having the appearance of the complainant's. **There was no injunction against the use of the word "Hunyadi."** This fact establishes that the Court considered the complainant's laches to be of a character such as to destroy her title in that word. For, in *Menendez v. Holt*, 128 U. S., 514, page 523, this Court says:

"Mere delay or acquiescence cannot defeat the remedy by injunction in support of the legal right, unless it has continued so long and under such circumstances as to defeat the right itself."

Third—Later references to the case of *Saxlehner v. Eisner* by this Court indicate that it found that complainant's title to "Hunyadi" had been destroyed. In the case of *Saxlehner v. Alex. Nielsen*, 179 U. S., page 45, this Court says:

"Under such circumstances, we think it too late now to maintain an exclusive title on the part of the plaintiff to the name 'Hunyadi' and that she has been guilty of laches, which preclude her right to an injunction."

In *La Republic Francaise v. Saratoga Vichy Springs Company*, 191 U. S., 426, in finding that the complainant's laches had destroyed its title to the word "Vichy," this Court refers to the case of *Saxlehner v. Eisner & Mendelson Co.* thus, on page 437:

"A clearer case of laches could hardly exist."—*Saxlehner v. Eisner & Mendelson Co.*, 179 U. S., 19-36."

That this Court has held "Hunyadi" to be public property is understood to be the case by Judges of the Circuit Courts, besides the Judges of the Sixth Circuit, is indicated by the following excerpt from Judge Chatfield's opinion in the case of *Benjamin Moore & Co. v. Auwell*, 172 Fed. Rep., 508-513:

"and *Saxlehner v. Eisner & Mendelson Co.*, 179 U. S., 19; 21 Sup. Ct., 7; 45 Law Ed., 60, in which

the word 'Hunyadi' was held to have become public property."

Fourth—Where the alleged infringers of a trade-mark have been using it under a show of right, or in the absence of fraud, neglect of the owner of the right to pursue the infringers, if continued for a long period of time will cause the mark to become public property. This will be the case, especially where the infringers are numerous.

Virginia Hot Springs Company v. Hageman & Co.,
138 Fed., 855. (Affirmed, 144 Fed., 1023.)

La Republic Francaise v. Schultz, 102 Fed. Rep., 154.
Ford v. Foster L. R., 7 Ch., 628.

Rowland v. Michell, 13 R. P. C., 457, and 14
R. P. C., 37.

Ripley v. Baudey, 14 R. P. C., 591.

Hyde & Company's trade-mark, 7 C. D., 724.

Sebastian on trade-marks, 4th edition, page 202.

Manufacturing Company v. Williams, 68 Fed., 489.

New York Grape Sugar Company v. Buffalo Grape
Sugar Company, 18 Fed., 638.

Wyeth v. Stone, Fed. Cas. 18107.

Coats v. Thread Company, 149 U. S., 562.

Analogous cases are found in reports referring to
patent rights.

Woodmansee & Hewitt Company v. Williams, 68
Fed., 489.

Leggett v. The Standard Oil Company, 149 U. S.,
285.

A trade-mark in "Hunyadi" could not be held in common by various owners of Hungarian Springs, the waters of which were sold competitively in the United States.

Del. & H. Canal Co. v. Clark, 13 Wall, 311-328.

Columbia Mill Co. v. Alcorn, 150 U. S., 460-463.

Lawrence Mfg. Co. v. Tenn. Mfg. Co., 138 U. S.,
537-549.

In *Del. & H. Canal Co. v. Clark*, 13 Wall, on page 324, this Court says in speaking of geographical marks:

"Their nature is such that they cannot point to the origin (*personal origin*) or ownership of the articles of trade to which they may be applied. *They point only to the place of production, not to the producer*, and could they be appropriated exclusively, the appropriation would result in mischievous monopolies."

It needs no argument to show that if the function of a trade-mark be to point to the personal origin or ownership, that "Hunyadi" could not perform this function for various competing owners of Hungarian Springs.

In *Columbia Mill Co. v. Alcorn*, this Court says, on page 463, of the 150th U. S., in describing the characteristic of a trade-mark, that

It must be designed as its primary object and purpose to indicate the owner or producer of the commodity, and to distinguish it from like articles manufactured by others."

"Hunyadi," if held in common by numerous rival owners of Springs in Hungary, could not distinguish the waters one from another.

In *Lawrence Mfg. Co. v. Tenn. Mfg. Co.*, this Court says, on page 549:

"The jurisdiction to restrain the use of a trade-mark rests upon the ground of the plaintiff's property in it, and of the defendants' unlawful use thereof,"

and upon page 546, says that the case of *Del. & H. Canal Co. v. Clark* is a leading one, and quotes with approval therefrom the following:

The office of a trade-mark is to point out distinctly the origin or ownership of the article to which it is affixed; or in other words to give notice who was the producer."

A mark used by numerous independent merchants as in the case of "Hunyadi" could not perform the office of pointing out distinctly the origin or ownership of the article, hence it could not perform the office of trade-mark.

THE USE OF THE TERM "HUNYADI" IN THE UNITED STATES.

The term has been used in the United States upon the following Natural Hunyadi Waters:

Hunyadi Janos,	Hunyadi Josef,
Hunyadi Matyas,	Hunyadi Sandor,
Hunyadi Lajos,	Hunyadi Corbin,
Hunyadi Arpad,	Hunyadi Bela, and
Hunyadi Lazlo,	Hunyadi Vilmos.
Hunyadi Miklos,	

(See Trojan, cross-questions 44 and 46, page 24, Record; Fennel, question 3, page 72, Record; Greyer, question 5 and cross-question 70, pages 91 and 107, respectively, Record, and the case of Saxlehner v. Eisner & Mendelson Co., 88 Fed. Rep., page 67.)

THE USE OF THE WORD "HUNYADI" ON ARTIFICIAL PRODUCTS.

1st—Moench & Reinhold, located in Chicago, used the word "Hunyadi" upon an artificial carbonated water from 1867 to 1871, the words used being "Hunyadi Bitter Water."

(See Bodemann, questions 4, 5, 6, 7 and 8, pages 55-56, Record.)

2d—Enno Sander, doing business in St. Louis, used the "Hunyadi Janos" upon an artificial water for about thirty years prior to 1899.

(See questions 7, 8, 9 and cross-question 24, pages 129 and 131, Record.) Fennell, in Cincinnati, han-

dled this Hunyadi of Sander's in 1888-1890. (See questions 18 and 25, pages 73 and 74.)

Defendants' counsel on page 11 of their Brief try to belittle the effect of Sander's thirty years' uninterrupted use of the word "Hunyadi Janos" upon an artificial product, by saying "he manufactured only small quantities and upon physicians' prescriptions," whereas it appears that Sander sold to the wholesale trade not only locally at St. Louis, but in other cities. This appears from Fennel's testimony.

Fennel, Q. 17, page 73. Record:

Have you in your business handled any other artificial "Hunyadi" than that of the defendants?

A. Yes, sir; I have.

Q. 18. Please state whose?

A. I have handled and sold the "Hunyadi Janos" water manufactured by Enno Sander, of St. Louis. I have also sold artificial "Hunyadi" made by myself.

Q. 19. At what time did you handle the artificial "Hunyadi Janos" of Enno Sander, and you may state any particulars in connection with your starting to handle the same.

A. I commenced to handle Enno Sander's waters, not alone Hunyadi Janos, but Lithia water, Iron water, Carlsbad water, and others, in the latter part of 1880, 1889, and probably 1890. The sale of these waters being mostly on prescriptions of physicians.

Q. 20. How did you become acquainted with Enno Sander's "Hunyadi Janos"?

A. Dr. Enno Sander made a display here at our Centennial Exposition, in 1888, and created a demand for his goods, and I took it up in a business way.

Sander, R-D-Q. 71, page 137, Record.

Did you ever sell your water in Cincinnati?

A. Yes, sir.

R-D-Q. 72. When?

9

A. I would have to look up my accounts; otherwise I can't tell you. I still sell there. I have sold my "Hunyadi Janos" to Park & Co., Cincinnati (wholesale druggists).

The use of the word "Hunyadi Janos" upon Sander's price-lists, and catalogues, pages 174, 181 and 182, Record, show that he made the product for the wholesale trade.

3d—The Consumers Company, manufacturers of water, in Chicago, from 1892 until 1904, called it during that time "Hydrox Hunyadi."

This company consented to a decree against them. (Trojan, R-D. Q. 59, page 26, Record, and page 73.)

4th—William T. Thackeray, in Chicago, from about 1894 to about 1899, manufactured a water, which he termed "Hunyadi Geyza," put up in a bottle similar to complainant's and marked with the word "Synthetic" in inconspicuous type.

This is the use enjoined in the case of Saxlehner v. Thackeray, 125 Fed. Rep., page 911, heretofore discussed; and see opinion of Judge Kohlsaat, page 155, Record.

5th—"Hunyadi" was used upon salts and artificial salts, the former made by complainant from Hunyadi Janos called "Hunyadi Salts," and the latter by the Armstrong Mfg. Co., of St. Louis, called "Granular Effervescent Hunyadi."

See consent decree, Armstrong, page 42, Record, and Trojan, X-Q. 46 and 47, pages 24-25.

6th—Druggists since 1869 have been using the word "Hunyadi" for artificial products made by themselves. (Bodemann, Q. 12-14, page 56 of Record; X-Q. 139, page 66.)

"Q. 12. As a pharmacist, do you know whether or not druggists formerly made a practice of preparing Hunyadi themselves?

(Objection.)

A. At the time I worked for Moench & Reinhold, they were the only ones, to my knowledge, that made Hunyadi water. When I was in business for myself, beginning in 1869, I have made it myself, on various occasions, from formulæ, given me by respective physicians.

Q. 13. What were the reasons for these physicians asking you to prepare Hunyadi?

(Objection.)

A. They prescribed it just like any other medicine.

Q. 14. Why did they not tell their patients to take a natural Hunyadi?

(Objection.)

A. They were not to be had in this country just then."

X-Q. 139, page 66: Asked whether Moench & Reinhold sold under a license from Saxlehner, he says:

A. "I did not know Andreas Saxlehner by name at that time.

(Fennel, Q. 28, page 75.) When did you first prepare Hunyadi yourself, and what led you to do so?

(Objection.)

A. We first made artificial mineral waters at various times and within the time of my experience since 1865; led to that by the demand of physicians for the natural waters and our inability to supply that demand, we made the artificial product according to the analysis of recognized authorities, furnished through the leading journals, German, English and French, but not American. I personally made Hunyadi as early as 1872.

(Objection.)

7th—Hunyadi was used in formulæ published in pharmaceutical journals and standard books:

The answers of Mr. Greyer show that the term "Hunyadi" had been used in a great number of pharmaceutical publications, not as indicative of any firm, or persons, but as indicating a product of certain characteristics, the name "Hunyadi" itself being a sufficient designation to convey to the persons to whom the publication was addressed what article was indicated.

The journals referred to by Greyer upon pages 144-148 include both American, English and German publications. Of the United States publications we find the following, page 95, Record:

"A. I note in the proceedings of the American Pharmaceutical Association, Vol. XXXVII, 1889, page 253, it says:

. . . 'Where the bitter waters of Buda-Pesth, the various 'Hunyadis,' Stephans, Victorias, Rakocys, and some thirty or more are competing now in a hot struggle for ultimate superiority.'

Encyclopedia Britan., American Edition, 1884, ninth edition, Vol. XVI, page 436:

"The numerous waters of Ofen are the best known, and some of them are stronger than the 'Hunyadi,' of which an analysis has been given in Table I."

"Merk's Report, 1900, page 381:

Formulæ for artificial mineral waters.

'Hunyadi.' "

"Proceedings of Amer. Pharmaceut. Ass'n, Vol. LI, 1903, page 612:

'Report on Progress of Pharmacy.'

'Formulæ for—

'Vichy,'

'Hunyadi,'

'High Rock,'

'Bitter Waters,' Etc.

"Merk's Report, 1903, page 143:

'Formulæ for artificial mineral waters for charge-
in fountains:

'Hunyadi,'

'Vichy,'

'High Rock,' Etc."

The answers of Trojan, complainant's agent in this country, show that "Hunyadi" indicates a product, not a source of production. He says, page 23:

"Q. 27. What is your objection to the use of the name 'Hunyadi' on an artificial water?

A. Principally that the public is not sure that it is a natural water or an artificial water.

Q. 28. You mean whether the complainant's water is a natural or an artificial water?

A. *No, not that; but Hunyadi water in general."*

A brief resume from the Record of the state of facts in regard to the use of the word "Hunyadi" in the United States upon artificial products is as follows: A demand for "Hunyadi" arose in this country as early as 1867, by reason of the descriptions of the Hunyadi Janos Springs in pharmaceutical and medical journals. This demand could not be satisfied by supplying the natural waters, because they were not to be had in this country at that time, and was supplied by artificial products under the name "Hunyadi" or "Hunyadi Janos."

Although complainant herself alleges that the water was sold in the United States since about 1870, and Bodemann and Fennel testify that the water was not to be had in this country when Moench and Reinhold and Mr. Fennel, respectively, made their artificial Hunyadi, and although Greyer, a druggist since 1868, says he became acquainted with it between 1870-80, yet, upon cross-examination, Dr. Sander (X-Q. 65 through 67), in an undecided manner, says that he sold Hunyadi in his drug store and that he sold out the

drug store in 1868. This testimony, it is submitted, in view of the undecided manner of stating it by the witness and of the fact that it does not correspond with the Bill of Complaint nor with the testimony of Bodemann, Greyer and Fennel, is inaccurate. But if it be accurate, Moench & Reinhold's use of the word "Hunyadi" upon an artificial product commenced a year earlier than when Sander sold "Hunyadi Janos" in St. Louis. The weight of the testimony is that Moench & Reinhold made an artificial water and sold it as "Hunyadi" for three years continuously before the complainant's water came into the country. Enno Sander made an artificial water named "Hunyadi Janos" probably as early as 1869 and continued its use for thirty years. Fennel made Hunyadi before he could obtain the natural Hunyadi. The publication of formulæ for making Hunyadi by pharmaceutical journals show that druggists had a custom of making their Hunyadi.

The testimony of each druggist, asked the question, was that he had manufactured "Hunyadi." Fennell and Bodemann (above).

Therefore the Record shows that beginning at a time three years prior to the use by complainant in this country of the word "Hunyadi," it had been used upon an artificial product, and that its use upon such artificial products has been a continuous one up to the present time. The word "Hunyadi," therefore, does not designate a group of spring owners, but a kind of product.

IT IS INCUMBENT UPON COMPLAINANT TO
SHOW THAT DEFENDANTS HAVE SOLD THEIR
PRODUCTS AS THAT OF THE COMPLAINANT.

Irrespective of the use of "Hunyadi" upon artificial products, and considering only the natural Hunyadis, since complainant has no exclusive right to the use of the word "Hunyadi," she must prove that defendants have attempted to sell their goods as the goods of the complainant, by the manner in which they have made use of the word "Hunyadi," or that they have been guilty of some other act from which it could

plainly be inferred that the intent was to palm off defendants' goods as those of the complainant. That is, in the absence of an exclusive right to "Hunyadi" in the complainant this becomes a suit for unfair competition in trade, the sole issue in which is, Have the defendants sold or attempted to sell their goods as the goods of the complainant? Testimony in cases of this kind is relevant only to the extent to which it tends to prove or disprove this issue.

Delaware & H. Canal Co. v. Clark, 13 Wall, 311.

Lawrence Mfg. Co. v. Tennessee Mfg. Co., 138 U. S., 537.

Coates v. American Thread Co., 149 U. S., 562.

Singer Mfg. Co. v. June, 163 U. S., 169.

Nat'l Elgin Watch Case Co. v. Illinois Watch Case Co., 179 U. S., 665.

French Republic v. Saratoga Vichy, 191 U. S., 427.

Howe Scale Co. v. Wyckoff, Seamans & Co., 198 U. S., 118.

La Republique Francaise et al. v. Schultze, 94 Fed., 500.

Complainant's testimony, in the main, is irrelevant, because it is largely an attempt to prove a theory that a mineral spring water cannot be reproduced artificially. The evidence shows that these spring waters are formed by rain percolating through the earth and dissolving the chemicals in the earth's crust. (Sander, X-Q. 37, page 134.) For the point counsel is seeking to make now, it is thought necessary only to call attention to the fact that man can discover by analysis what those chemicals are, and to the strong belief of men of science that man can bring water and these chemicals together again in an order and under conditions such as to allow them to act upon each other and to assume the same state that they assumed when they met in the earth, a belief which is held by so many and for so long a time, as proved by the record in this case, and by the findings of United States Courts in other cases, as to show conclusively that there is no fraud in defend-

ants' representing that they manufacture mineral spring waters, provided defendants prove that they follow accurately and honestly the processes which these men of science recommend for reproducing specific waters. That defendants so follow such a process in manufacturing "Hunyadi" is established by undisputed testimony.

The evidence concerning man's ability to reproduce a mineral spring water need be examined by this Court only to the extent of determining that there is such probability that it can be done and is done in the present instance, as to clear defendants of a charge of fraud in asserting it. For it being complainant's allegation that there is a fraud, "the deceitful representation or perfidious dealing must be made out or must be clearly inferable from the circumstances." *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S., 537-552.

Such an examination of the evidence will convince the Court that the belief is general that a natural spring water can be reproduced and that such belief is well founded.

In this case the chemists, who were called to testify both by defendants and by complainant, state that they believe the chemical properties of natural spring waters, and of artificial water scientifically prepared from the analysis of the former, to be the same. (Defendants' witnesses, *Bodemann*, Q. 22, p. 57; *Fennel*, X-Qs. 121 and 124, pp. 84 and 85; and *Sander*, Q. 22, p. 131; and complainant's witness, *Sparks*, X-Qs. 38 and 39, p. 33, Records.)

Bodemann :

"Q. 22. You are of the opinion, then, that a natural water can be produced artificially?"

(Objection.)

A. Most decidedly."

Fennel :

"X-Q. 121. Is it a not a fact that the analyst only guesses that there is so much sodium sulphate present in the natural water because he assumes that the sodium present would combine with so many atoms of sulphur?"

A. Most emphatically no. In the first place, all elementary substances and their compounds are very selective in their associations. Experience and observations prove beyond the question of a doubt that these associations can only exist under definite conditions. These conditions are influenced by heat, and heat alone. The influence of light, magnetism and electricity are only modifications of heat, consequently solubility is the only factor to be considered in the deportment of the substances, and the allotment of acid radicals to a base is under specific definite uniform quantities, in proportion to their molecular weights. In the analyses of waters these solubilities are definitely established, whether or not in the presence of free gas—that is, carbonic acid gas—hence the chemist discovers by absolute rules, which are not subject to fluctuations or whims of the operator.

X-Q. 122. Then it is your conclusion, based on the experience of chemists, as to the selection of elementary substances, which induces you to make the statement that certain combinations exist in natural waters from the substances as found by the analyst after the first evaporation of mineral waters?

A. Certainly."

Sander:

"Q. 22. Is an analysis of a natural mineral water any criterion of the character of the water?

(Objection.)

A. If an analysis be made according to the rules of chemistry, it represents the active principles of the water."

Sparks, the only chemist called by the complainant, testifies thus:

"X-Q. 38. Have you any reason for supposing that if the same acids and bases in the same quantities be dissolved in a water that the character of the salts in

solution will differ from the character of the salts in solution of a natural water, whose analysis shows the same quantity and character of acids and bases?

A. Not in their chemical properties.

X-Q. 39. I understand you to say, then, that you believe the chemical character of the solutions will be the same in the natural and the so-called artificial water referred to in my previous question?

A. Presuming the analysis was correct, I do.

R-D-Q. 71 (p. 35). You have heretofore testified that the chemical character of a solution prepared from acids and bases according to the analysis of a natural mineral water will have the same chemical character as the natural mineral water. Is it your testimony that a water thus prepared artificially is the same water as the natural water, which it is supposed to imitate, or not?

A. The same in chemical composition, but not necessarily the same in physical action."

Quotations from books are not competent evidence, but even these do not support complainant's position that a natural water cannot be reproduced. The quotations upon pages 29 and 30 of the Brief of complainant's counsel from Jacquot & Willm and from Walton, contain nothing to refute the statement that the state of chemicals in solution in natural water is the same as the state of the same chemicals in solution in the artificial water.

The expert witnesses as to the chemical properties of natural mineral spring waters and artificial waters are unanimous in the belief that the properties of the two are the same.

As to the therapeutic effect of the natural mineral spring waters and of the scientific artificial reproductions thereof, all of the competent evidence in this case likewise proves that the effects of the two kinds of waters are the same. The competent evidence in this case upon the therapeutic effects of natural and of artificial waters consists of the testimony

of physicians testifying under cross-examination. There were three such physicians :

Dr. Walker,
Dr. Clark,
Dr. Cameron,

called by defendants, who testified that they had found in their practices that the therapeutic action of defendants' artificial "Hunyadi" was the same as that of complainant's "Hunyadi Janos." These physicians were all men of ripe experience and of unquestioned standing in their profession. Their specific answers will be quoted later in the Brief when comparison is instituted between complainant's "Hunyadi Janos" and defendants' artificial "Hunyadi." Whilst this competent evidence was adduced by the defendants, during the taking of their testimony in chief, the complainant did not call a competent witness to testify concerning the therapeutic effects of natural and artificial waters, and did not adduce any competent evidence upon this point. She did call the chemist, Sparks, who stated upon his direct examination that the natural and artificial waters would not have the same therapeutic effect, but upon cross-examination he makes admissions which clearly disqualify him from testifying as an expert as to the therapeutic effects of waters. On page 33, he says :

"X-Q. 40. From one of your previous questions, I understand you to entertain the opinion that a natural water and a water produced by dissolving the constituents, found by analysis to exist in the natural water, to have different therapeutic effects ; am I right ?

A. Yes.

X-Q. 41. Can you give any example of this ?

A. I quoted four authorities on the subject, and also stated that my experience was not gained from personal practice, as I was not a physician.

X-Q. 42. You have never tried this, then, yourself ?

A. No."

The quotations from these books is mere hearsay.

Hence all the competent evidence adduced both by defendants and by complainant is that natural spring waters and scientific artificial reproductions thereof are the same both chemically and in their therapeutic effects. Counsel for defendants can find no evidence in the Record, from which complainant's counsel are justified in making the following statement, occurring upon page 23 of their brief, viz:

"A short review of the scientific testimony adduced by both parties to this controversy, establishes beyond a doubt, that in the present condition of science and with the means at hand, it is impossible to artificially make a water which will have the same chemical composition and the same therapeutic effects which the natural water has."

The Court need not follow complainant's counsel in their flights into the realm of speculation as to what may be discovered at some future day. For should science at some future time discover means of demonstrating to man's senses the atomical relation of chemicals in solution in water, and should science then show that the complainant has been wrong in her representations to the public as to what compounds "Hunyadi Janos" contains, and should science then show that defendants are wrong as to the state of the compounds their artificial "Hunyadi" contains, *this could prove only that the public had been mistaken as to the ingredients of the articles they bought, but it could not show that the public was deceived as to the respective sources of manufacture or origin of the goods.* If science now supplied the aforesaid evidence to complainant, that would give her no standing in court.

Deception of the public, as to the ingredients of an article of merchandise, is not unfair competition in trade, and is not actionable at the suit of a private individual or group of such individuals, in the absence of legislation.

Even in cases where the proof is conclusive that the ingredients of the merchant's product is not what he represents them to be to the public, it is held by the Courts, that the de-

ception of the public as to said ingredients does not give a second merchant who deals in the same goods, the right to maintain a suit against the first merchant for such deception of the public.

American Washboard Co. v. Saginaw Mfg. Co., 103
Fed. Rep., 281.

New York & R. Cement Co. v. Coplay Cement Co.,
44 Fed., 277.

Worden & Co. v. California Fig Syrup Co., 187
U. S., 517-527.

The question of the right of a private individual to maintain a suit for a public injury was directly raised in both the American Washboard case and in the New York and R. Cement Co. case, and such right was denied both by the United States Circuit Court of Appeals, for the Sixth Circuit, in which His Honor, Judge Day, treated the subject fully in the former case, and by His Honor, Judge Bradley, in the latter case.

In the case of Worden Co. v. California Fig Syrup Co., the question did not arise directly. However, Mr. Justice Shiras, upon the bottom of page 527, says that Courts have no jurisdiction in the absence of legislation, to maintain suits to protect the public against the sale even of quack medicines.

That the protection of the public against the sale of spurious goods is the work of the State and not of private individuals is proved also, by the Food and Drugs Act of June 30, 1906, against the sale of adulterated and misbranded goods; which provides in Sec. 3 that "the Secretary of the Treasury, the Secretary of Agriculture and the Secretary of Commerce and Labor shall make uniform rules and regulations for carrying out this Act;" and in Sec. 5 provides that it shall be the duty of each district attorney upon the report of the Secretary of Agriculture to bring appropriate proceedings for the violation of the Act.

DEFENDANTS HAVE NOT DECEIVED THE PUBLIC ABOUT THE INGREDIENTS OF THEIR ARTI- FICIAL "HUNYADI."

If, in the absence of legislation, a Court in cases brought by private individuals, will not take jurisdiction when there is no proof of the sale of defendant's goods as those of the complainant's, even when there is proof that by the defendant the public are not alone deceived as to the ingredients of the merchandise, but are so deceived to their detriment, how hopeless is complainant's case here, where there is neither proof that defendants have sold nor sought to sell theirs as the complainant's goods, nor proof that the public are deceived as to the ingredients of their artificial "Hunyadi," but where there is proof that the business of reproducing mineral spring waters is one which has been carried on for nearly a hundred years, to the benefit of the public, a business which has had the sanction of the tribunal designated by the aforesaid Act of June 30, 1906, to make regulations, and is one in which the defendants have been honestly engaged from a period of time ante-dating the introduction of "Hunyadi Janos" into the United, and probably ante-dating the "discovery" of complainant's first spring. (Julius Greyer, Q. 16, p. 92, and Saxlehner v. Eisner & Mendelson, 179 U. S., p. 21.)

HISTORY OF THE BUSINESS OF REPRODUCING MINERAL SPRING WATERS.

The testimony of Enno Sander, who had been manufacturing mineral spring waters since 1866, concerning the age of the business is:

"Q. 19. For how long a period and to how great an extent has the industry of the manufacture of artificial waters been carried on?

(Objected to by complainant as incompetent, immaterial and irrelevant.)

A. Since about 1810 or 1812. I think it was about

that time. Even before that, but since that time in a more business-like way. (Record, p. 131.)

Q. 20. And to what extent?

(Same objection.)

A. The manufacture of mineral waters has constantly increased since I have been manufacturing.

Q. 21. Why?

(Same objection.)

A. Because eminent chemists like Carl H. Schulz, in New York, took to the manufacture of artificial waters."

An idea of the extent of the business of manufacturing mineral waters may be had also from the cases of *City of Carlsbad v. Schultze*, 78 Fed. Rep., 469; *La Republique Francaise v. Schultze*, 94 Fed. Rep., 500; and *La Republique Francaise v. Schultze*, 102 Fed. Rep., 155.

In the 94th Fed. Rep., on page 501, His Honor Judge Wallace says:

"For fifty years or more artificial mineral waters approximating more or less closely in their ingredients and properties to the natural Vichy water have been prepared and sold by the name of 'Vichy' by manufacturers in Europe and this country. Natural waters lose their original virtues, more or less, when removed from their sources, while artificial waters manufactured under pressure of carbonic acid gas remain intact in all their ingredients. . . . They were made and sold to supply a demand for artificial waters having properties similar to those of the natural waters."

In the *City of Carlsbad v. Schultze*, His Honor Judge Cox says, page 470 of the 78th Fed. Rep.:

"There was no fraud or deception on either side. The sale of the natural and artificial water went on, and is still going on, without difficulty and confusion; some preferring the former, other the latter. No one

mistook the one for the other. Each has its legitimate place in trade. . . . That the defendant may make and sell the water in question is hardly disputed, but it is said that he must not use the name Carlsbad in any form. This is but another way of saying that his business must cease. By what other name could the water possibly be described? How could a customer make his wants known except by using the name Carlsbad? To inform the owner of a California vineyard that he is at liberty to make champagne and Burgundy wine, but must sell it under the name of 'grape juice' would not be conferring upon him a highly valuable franchise. If the business be honest those engaged in it have the right to describe the product so that the public will know what it is. What the defendant makes is artificial Carlsbad. This is what a part of the public wants, and there is no reason why they should not have it. Another part prefers the natural Carlsbad. Both parties are engaged in legitimate business. So long as neither interferes with the lawful occupation of the other neither has a right to complain. There is room enough for both."

The wide use of artificial waters and the useful public function this industry performs is recognized by Dr. Crook in his book on "Mineral Waters of the United States," from which complainant has quoted. This book was written in the interests of springs, and one may therefore expect him to look rather favorably upon the natural waters. However, on page 37, he says:

"COMMERCIAL AND SYNTHETIC WATERS. A word may be added here regarding the home use of mineral waters. These are of two classes: (1) The natural mineral waters, which are taken directly from the springs and shipped to the markets in barrels, carboys, demijohns, or bottles; and (2) The artificial or synthetic waters, which are prepared in the laboratory or manufactory, and charged with gaseous and solid in-

redients to simulate, as a rule, the analysis of some well-known natural water *for which they are named. Both classes of these waters undoubtedly occupy a useful sphere in our daily domestic life, and their use for table, club, and bar purposes in the United States has reached enormous proportions. Further than this, some of them occupy an important field of therapeutic usefulness.*"

The manufacture of mineral spring waters has reached its present growth because many people prefer the artificial to the bottled natural waters.

The reason a part of the public prefers the artificial waters is that these waters are pure, whereas the natural waters contain a certain amount of organic impurities of an albuminous nature, and of animal or vegetable origin, which, when bottled up, decay, produce disagreeable odors, when the bottles are opened, and give a nauseating feeling to the persons taking them. These impurities of the natural waters, which become so objectionable after the waters have been bottled for a while, are absent in the artificial waters. Hence the preference for the latter.

Fennel —, Q. 26, 27; X-Q. 108 and 157, pages 74, 83 and 86, respectively, Record:

"Q. 26. Have you, in the course of your business, had occasion to become acquainted with the condition of the imported Hunyadi, and particularly with the condition of the complainant's Hunyadi Janos, when opened here? And if so, explain the condition of the same.

(Objection.)

A. All the Hunyadi waters, in general appearance, were not uniform, a large proportion of the waters containing suspended matter of organic origin, frequently producing disagreeable odors upon opening of the bottle.

Q. 27. Please state whether or not you have used

the artificial water of the defendants, and the imported water of the complainant, and compare their results, and, if you have any preference for one or the other, give your reasons for it.

A. The preference is in favor of the artificial water, for the reason explained in the previous answer—to question 26. I can say, in the general routine of business we have daily calls for a drink of Hunyadi water; that we had been in the habit of giving a natural Hunyadi water, but so often flocculent matter having a very disagreeable appearance, sometimes large pieces, would be very objectionable to the consumer, and caused complaint, and placing the responsibility of deterioration upon us; that we made our own Hunyadi, according to Fresenius analysis, and afterwards used defendants' water on account of its clear, uniform appearance.

(Objection.)

X-Q. 108. You have stated on your direct examination that you have observed floating matter at various times in the natural Hunyadi Janos water. Can you state what the nature of that matter was?

A. They were fungus growths.

X-Q. 157. Then it is your deduction that there is a change going on in the natural Hunyadi Janos water, is it not?

A. It is understood that I am speaking of changes taking place in the bottle, and not of changes taking place in the springs affected by organic matter."

Julius Greyer, X-Q. 148 and X-Q. 149, page 114. Record:

"148. Have the organic substances in the water any effect on the chemical or inorganic substances found in that water, or vice versa?

A. In a way.

X-Q. 149. In that case, then, there would be a change going on in such water, would there not?

A. They are considered detrimental to the keeping qualities of the water."

John C. Sparks, complainant's witness, says in R-X-Q. 82-84, page 37, Record:

"R-X-Q. 82. Do any of the analyses of Hunyadi Janos by recognized authorities, or as published by complainant, show any organic substances, or make any mention of nitrates, nitrites or albumenoid ammonia?

A. It is not usual in an analysis of mineral water to publish the percentage of contained organic matter. This is merely the sanitary provision of a water analysis. Any water that is offered as a mineral water is offered on account of its beneficial action, which presupposes sanitary purity.

R-X-Q. 83. These organic substances, then, are regarded as impurities?

A. They are not regarded as impurities, except when present in excess.

R-X-Q. 84. Their tendency is not sanitary?

A. Not if present in excess."

That the presence of organic substances in bottled natural waters is highly objectionable is evident also from the following excerpt from the decree of the Supreme Court of the District of Columbia, in the case entitled:

The United States

v.

75 Bottles, more or less,
of Liquid Labeled "Basic
Lithia Water."

No. 795.

Reported in Bulletin issued May 17, 1909, by the United States Department of Agriculture, Office of Secretary Board of Food and Drug Inspection, viz:

"It is further ordered, adjudged and decreed that the said liquid contained in the said ninety-six bottles, seized as aforesaid, is adulterated in violation of said

Food and Drugs Act approved June 30, 1906, in that said water is contaminated with the presence of the colon group of organisms, and is accordingly unfit for human consumption, and is deleterious to health."

Besides the objection, due to decay of organic matter in natural waters, after they have stood in bottles, they are subject to another objection; namely, that they vary at different seasons of the year; whereas the artificial mineral waters are uniform and may be made of a density, which is considered the standard or desirable density which the owners of the springs strive vainly to maintain in the natural waters.

Bodemann, Q. 21, page 57, says (in Q. 21):

"What is your opinion as to the value of natural mineral waters and artificial waters, honestly prepared according to the analyses of the natural waters, and you may state your reasons for any opinions you may express.

A. If uniformity is preferred, then the artificial water fills the bill; the natural does not. That is my reason for the preference."

Dr. Sander, X-Q. 37, page 134, Record:

"Please compare the analysis of Liebig and the analysis of Fresenius, and I ask you to state whether they are alike, and if not, in what respects they differ.

A. The two analyses mentioned of Liebig and of Fresenius are greatly different from each other in the content of active ingredients, but it is not the fault of the chemist, because natural waters depend upon the rain that comes down; one time they are strong and another time they are weak."

These two failings of the natural water, viz., their lack of uniformity at different seasons of the year and the decay of organic matter therein when they have stood in bottles, explains the demand of the public for the artificial waters. This demand has called forth the business of making artificial waters.

ARTIFICIAL WATERS ARE SANCTIONED BY BOARD OF FOOD AND DRUGS ACT.

This business has the approval of the Board of Food and Drugs Inspection, under the Food and Drugs Act. Food Inspection Decision No. 94, issued by the United States Department of Agriculture on May 23, 1908, entitled "The Labeling of Medicinal and Table Waters," contains the following paragraph:

"Manufactured water may be named after a natural water in case the words 'imitation' or 'artificial' are used, but such manufactured waters must clearly resemble in chemical composition the natural waters after which they are named."

This quotation contains the answer to the question which seems to vex complainant's counsel, viz: "Where are we to stop short in allowing the use of the name (Hunyadi) to other manufacturers?" (See page 43 of Complainant's Brief.)

DEFENDANTS HAVE BEEN MANUFACTURERS OF MINERAL WATERS FOR MANY YEARS AND BEAR A HIGH REPUTATION.

The defendants and their predecessor (their father) have been manufacturing mineral waters for about fifty (50) years. (See testimony of Julius Greyer, Q. 16, page 92 of Record.) The public have confidence in the honesty of the firm. Dr. Cameron, a witness called by the defendants, in answer to a cross-question by complainant's counsel, plainly indicates the confidence which is reposed in the defendants:

"X-Q. 24. Then you have never analyzed this water, and your statements as to its contents are based on the representations made by the defendants? Is that so?

A. To a certain extent, yes. But also on my knowledge of the firm individually."

This witness was not asked a direct question concerning the standing of the firm. The information, therefore, gains additional strength, since it is an entirely voluntary testimonial. The confidence in the firm is shown in similar unsought-for information in the answer of other physicians. (Question and answer, 4. Dr. Benj. F. Clark, page 122 of Record.)

"Q. 4. In your practice, have you become familiar with any of the imported Hunyadi waters, and with any artificial Hunyadis? If so, give the name thereof.

A. I have used the Hunyadi Janos water for years. I have used Wagner's Artificial Carbonated Hunyadi a few years; I don't know just how many years for the artificial water. I have not used anything else for my own family for the last eighteen months, or a year; I can't stipulate any length of time."

Defendants make about thirty artificial spring waters, amongst which is an artificial "Hunyadi." (Greyer, Q. 25, page 94, Record.)

Defendants make their artificial "Hunyadi," according to the analysis, published by Fresenius, an eminent chemist, of the "Hunyadi Janos" Springs. The process that defendants use is that recommended by F. Raspe, likewise a renowned chemist. To make their artificial "Hunyadi" more palatable, defendants charge it with carbon dioxide gas.

Defendants' chemist, Greyer, when asked in X-Q. 143, page 114, why he had selected the analysis of Fresenius, says:

"Because Fresenius is considered one of the highest authorities, and I am better acquainted with his works than of those authorities who have made analyses of 'Hunyadi Janos' Bitter Waters."

Sander, X-Q. 42, page 134:

"Are not Professors Fresenius, Bunsen and Ludwig also regarded as high authorities on analyses?

A. They are regarded as high authorities."

Of F. Raspe, complainant's witness, the chemist Sparks, says, page 35, Record:

"X-Q. 69. Have you ever heard of F. Raspe?

A. I have heard of him.

X-Q. 70. Is he a recognized authority?

A. To the best of my belief; I have not read any of his works, however."

During the taking of their testimony, defendants' chemist, Greyer, read into the record the formula which defendants followed in producing their artificial "Hunyadi." The formula appears on page 118 of the record. Defendants called likewise a chemist, Charles T. P. Fennel, who has held the Chair of Chemistry and Pharmacy in the Cincinnati College of Pharmacy since 1886, and who was the State Chemist for the Ohio Food Department for seven years. In question 16, page 73, record, he was asked: "What was the result of your analysis of defendants' 'Hunyadi' water?" "A. I found that the composition of the defendants' 'Hunyadi' water corresponded to the analysis of 'Hunyadi Janos' by Fresenius."

COMPLAINANT'S CONTENTION THAT DEFENDANT'S PRODUCT IS NOT ARTIFICIAL HUNYADI.

Complainants produced no testimony whatever to rebutt defendants' evidence concerning their artificial Hunyadi, but complainants' counsel in their brief contend that defendants' artificial product should not be called an artificial "Hunyadi." The grounds which they take as a basis for their argument may be arranged under four heads, viz.:

First—Because the natural "Hunyadis" vary in strength at different periods of the year, whereas the artificial is made uniform.

Second—Because the artificial "Hunyadi" contains carbon dioxide in excess and the natural "Hunyadi Janos" does not contain that gas. (This statement about the natural is not supported by the evidence.)

Third—Because the natural “Hunyadi Janos” contains organic matter and the artificial “Hunyadi” contains no organic matter.

Fourth—Because the natural “Hunyadi Janos” is formed by rain water, whereas in the artificial “Hunyadi” distilled water is used.

These objections will be taken up in the order set forth.

First—The analysis of the natural waters vary somewhat; but this variation is due to the fact that in rainy weather there will be a greater percentage of water to a given amount of salts. (See Sander X-Q. 37, page 134, and X-Q. 39.)

Fennell is asked, X-Q. 144, page 87, “Do not all the analyses of “Hunyadi Janos,” such as those of Fresenius, Ludwig, Bunsen and Liebig differ?” “A. All these analyses differ in quantities, but not in constituents.” A statement which he qualifies somewhat in X-Q. 149, thus, “The analyses as presented, in constituents, not materially, and in quantities materially differ.”

If a person who was taking natural “Hunyadi Janos” diluted it with some pure water, complainants’ counsel will hardly contend that the diluted dose was not “Hunyadi Janos.” One would be strong “Hunyadi Janos,” the other weak, in the same sense that there is strong coffee and weak coffee. Moreover, it appears that the complainant gives to the public these analyses as representing what their “Hunyadi Janos” contains. (Spark X-Q. 36, p. 32, record.) Her published analyses are the standards of strength for “Hunyadi Janos.” It does not appear that complainant changes these representations to the public with the change of seasons at which the waters are drawn from the wells. It is highly desirable to have the water uniform, in order that a person may know how much of it to take as a dose. It does appear that the complainant strives to maintain a uniform density for the “Hunyadi Janos water. She mixes the output of 124 springs in one cistern. (Trojan X-Q. 42 and X-Q. 43, page 24.) Defendants keep their artificial Hunyadi up to the standard of strength, published by complainant.

Second—The natural "Hunyadi Janos" contains free carbonic acid gas, but this gas is not present under pressure greater than the atmospheric pressure, as is the case in the artificial Hunyadi, that is, the natural "Hunyadi Janos" is not an effervescent water and the artificial is effervescent.

Fennel, X-Q. 171-172, page 89, and Sparks, X-Q. 49 and X-Q. 62, pages 33 and 35. Of the natural Hunyadi Janos Fennel is asked:

"X-Q. 171. Does the analysis by Fresenius show any carbonic acid or carbonic acid gas?

A. It does.

X-Q. 172. In which of the eight substances enumerated on this analysis do you find carbonic acid or carbonic acid gas?

A. In two of them; calcium bicarbonate and ferrous bicarbonate.

X-Q. 172. But you do not find any carbonic acid or carbonic acid gas separately in this analysis, do you?

A. No, sir; I do not."

In question 35, page 76, Fennel says that the calcium bicarbonate and the ferrous bicarbonate contained in the Fresenius analysis of the Hunyadi Janos Springs could remain in solution in the natural water only in the presence of free carbonic acid gas.

Complainants' witness Sparks, X-Q. 48, page 33,

"Is it not a fact that in evaporating 'Hunyadi Janos' to dryness, the bicarbonates contained therein will be reduced to insoluble carbonates.

A. Yes, insoluble in water free from carbonic acid.

X-Q. 49. In the presence of carbonic acid, these salts become bicarbonates?

A. No, they are merely held in solution by the carbonic acid present.

X-Q. 62. Do you know what occluded gases there are in 'Hunyadi Janos'?

A. Yes, carbonic acid and to the best of my knowledge and belief a trace of sulphureted hydrogen."

Complainant's counsel on page 25 of their Brief say that Enno Sander testified that natural "Hunyadi Janos" water had no carbonic acid gas in it.

The question and answer, record, page 130, are:

"Q. 16. Did your manufactured water resemble the natural 'Hunyadi' when so produced?

A. I think not, because the water I manufactured was carbonated, while the natural water had no carbonic acid in it.

The use of the word "resemble" lead the witness's mind to the appearance of the respective waters; that is, a carbonated water would be sparkling and a water in which the gas was not present in excess would be a still water.

Upon page 239 of the Record, which is a reprint of defendants' catalogue of 1901, appears the following excerpt:

"Professor Fresenius, the eminent chemist, in his opinion of 'Hunyadi Janos,' has given a valuable hint when calling attention to the fact that free carbonic acid gas has a most beneficial influence upon the taste of the water."

From the answers of the three chemists, Fennel, Sparks and Sander, it is clear that the "Hunyadi Janos" contains free carbonic acid gas. However, complainant's counsel draw the conclusion from the above quoted answer of Sander that the natural water contains no free carbonic acid gas, and then from this deduction, which is clearly erroneous, as shown by the testimony of the other two chemists, complainant's counsel launch into a dissertation upon the mysterious action of the natural waters, whereby salts that cannot be held in solution in the artificial waters, except by the addition of free carbonic acid gas, are held in solution in the natural waters without carbonic acid to the consternation of chemists, and to the

reduction of the science of chemistry to a mere system of guess work. The evidence is quite the contrary. The testimony of both Fennel and Sparks is, that in the natural "Hunyadi Janos" the calcium bicarbonate and the ferrous bicarbonate are held in solution by the presence of free carbonic acid gas. Sparks says this directly in X-Q. 48, 49 and 62, above quoted and no other construction can be placed upon Fennel's answers to X-Q. 171 through 173 than that it takes the presence of free carbonic acid gas to hold calcium bicarbonate and ferrous bicarbonate in solution in natural "Hunyadi Janos." He says in answer to X-Q. 171, that Fresenius' analysis shows carbonic acid gas. He says in X-Q. 173, that the gas is not shown in the analysis separately, but he says in X-Q. 172, that calcium bicarbonate and ferrous bicarbonate show carbonic acid gas. What is this but saying that ferrous bicarbonate and calcium bicarbonate require the presence of carbonic acid gas to remain in solution in natural Hunyadi Janos.

It is submitted that there is no foundation whatever in the testimony for the statements appearing upon pages 23, 24 and 25 of complainant's brief, that the artificial "Hunyadi" cannot be made without a *supercharge* of free carbonic acid gas, and that in the natural "Hunyadi Janos" calcium bicarbonate and ferrous bicarbonate are held in solution without the presence of free carbonic acid gas. The testimony is merely that these two substances cannot be held in solution in water without the presence of free carbonic acid. This statement is true whether the water be a spring water or whether the salts be placed in the water by man.

If a water such as Hunyadi Janos contain any free carbonic acid gas, the addition thereto of more carbonic acid gas, so as to make the water a carbonated or effervescent water, does not change the character of the salts theretofore in solution.

Bodemann R-D-Q. 196, page 70,

"If 'Hunyadi Janos' contains any free carbonic acid gas, would the addition thereto of more of the same gas change the chemical character of the salts held in solution?"

A. It would not."

To the same effect is the answer of Sander, X-Q. 49, page 135.

The therapeutic effect of carbonic acid gas in excess is simply that the water is more pleasant to the taste.

Dr. Walker says, X-Q. 7, page 121, record:

"A. It makes the water more palatable, and they can take it more readily. It is not so likely to nauseate them. One of the best remedies that we have for nausea is carbonated water.

X-Q. 8. Does the carbonic acid gas, in your opinion, in any manner add or subtract from the therapeutic effect of an aperient water?

A. No, sir."

Dr. Clark's testimony is little at variance with this. It is simply that the carbonic acid gas has a pleasant effect, or rather tones up the intestinal tract. (X-Q. 21, page 123, Record.)

"X-Q. 21. Has carbonic acid gas any effect on the stomach?

A. It depends altogether on the idiosyncrasy of the person. The artificial Hunyadi water, being carbonated, produces rather a pleasant sensation and rather tones up the intestinal tract.

X-Q. 22. Then carbonic acid gas has a therapeutic effect of its own on a patient?

A. It certainly has.

R-D-X. 24. Has carbonic acid gas any effect as a laxative?

A. It increases peristaltic action of the bowels. That is, the muscular action of the bowels.

Third—Complainant's counsel contend that the artificial product is not a "Hunyadi" because it does not contain organic matter. The complainant in her statements made to the public of what her "Hunyadi Janos" contains does not mention any organic matter. Defendants' counsel earlier in the Brief, has

shown that organic matters in natural waters are highly objectionable, are prohibited by the pure food laws, form one of the chief objections to bottled natural waters, and are things which the owners of springs strive to eliminate from the waters. Had defendants been careless in their plant, and had their employees been unkempt, so that organic matters did get into their product, the Court would hear a loud protest from complainant about defendants hurting the reputation of Hunyadi. The counsel's attempt to make complainant's weakness, viz., the unavoidable organic matter in the natural appear as her strength, and our strength, viz., the purity of our product as our weakness, will not help complainant here.

Fourth—The last position of complainant's counsel is that defendants' artificial product is not a "Hunyadi," because defendants use distilled water and not rain water. The analyses of chemists of a spring water show the chemicals contained in the water, both such chemicals as got into the water as rain water, or whilst the aforesaid rain water was passing through the earth. Therefore, the manufacturer must start with a pure water and add to it the chemicals indicated by the analyses, for if the manufacturer started with a rain water; viz., a water containing some chemicals, and then added to said rain water the chemicals shown by the analyses, the manufactured water would not be a reproduction of the natural water, but it would possibly be the natural water, plus the chemicals which the rain water with which he started contained. The complainant could then raise a cry like that she raised against defendant in *Saxlehner v. Thackeray*, 125 Fed. 911, "He is simply doctoring the waters of Lake Michigan."

The facts about the constitution of "Hunyadi Janos" and Wagner's Artificial "Hunyadi" are these:

Leading chemists, by analyses, have found that "Hunyadi Janos" has certain acids and bases. These analyses differ in slight details, but are the same in the main ingredients. The differences are easily explained by the fact that the natural water varies some, according to the rainfall. When there is a heavy fall of rain, the water passes through the earthy strata

containing the different salts more rapidly, and, therefore, takes up less in solution, and when there is less rain, the water passes through the strata more slowly and takes up more salts. The analyses, made at different seasons of the year, therefore, do vary, but only in quantity, not in the character of the chemicals. Fresenius, Liebig, Bunsen, and the other leading chemists having found that there are certain acids and bases in the water, then, according to the selectiveness of these elements for each other, find that in the natural water there are certain salts. Raspe, a recognized authority, has taken the analysis of Fresenius and determined a formula, by following which, the same amount of salts may be gotten into solution in an artificial water as are combined in a natural water.

The defendants, according to this formula, have produced an "Hunyadi" water, which subjected to all the tests which chemists and physicians know, is the same as the natural "Hunyadi" water. Complainant seeks to belittle the testimony of chemists by asking questions such as these: "Can you state positively that in the solution which has been found to contain a certain number of elements, that, for instance, hydrogen, sulphur and magnesium will be combined in such and such proportions?" "Have you ever seen an atom of sulphur?" "Have you ever seen an atom of hydrogen?" and such like questions. Of course, the witnesses have not, and of course they cannot penetrate so thoroughly into the construction of a material as to state positively from their human perceptions, sight, touch, smell, etc., how the molecules are combined with each other. The Courts do not demand such proof beyond the powers of mortals, but such is the high standing in Courts of chemists and the theories and laws of chemistry, determined by centuries of experiments and observations of phenomena, that matters of life or death of human beings are made to rest upon the testimony derived therefrom. If, in a prosecution for homicide, a question arises whether or not the stomach of a corpse contained poison or not, upon what do the Courts rely for the answer, but the testimony of chemists and physicians? And how does the chemist decide whether or not there is poison present in the stomach? He

takes the contents thereof and subjects the same to an analysis. From that analysis he finds that there are certain substances present. In stating that there are certain substances present, he is led to do so by the fact that the aforesaid contents gave him certain reaction with other chemicals. Does the Court say to that chemist, in order to accept his testimony, "Have you ever seen an atom of hydrogen?" "Have you ever seen a molecule of sulphur?" "Is not the whole atomistic theory unprovable?"

How could this Court have determined the ingredients of the Saratoga and the French Vichies but from the testimony of chemists? (191 U. S., 435.)

Again, vast industries are based upon the statements of chemists, and the theories and the laws announced by them. Could we not depend upon their statements that certain elements brought together will combine in a definite way, the foundations of these industries would crumble away. Had the manufacturer no assurance that when he brought certain elements together they would act according to these laws, and produce always the same result, his business would be the merest guesswork. But he knows, from the centuries of experience of chemists, that when man brings certain elements together, following the laws of their nature, they will always produce the same result. In producing an artificial water man knows the elements in the natural water and the relative affinities of the elements for each other. (Greyer, X-Q. 151, p. 115.) He knows what salts of those elements are soluble. He brings these elements together in water. Being in a solution the elements seek each other according to their affinities, or their respective natures, and come to an equilibrium according to the laws of their nature. The so-called "artificial water," therefore, is not simply a product made by man. The result is reached through the laws of nature which govern those respective ingredients. The evidence in this record should lead one to believe that the ingredients in solution as the result of man's placing the elements into water reach the same equilibrium as when these same ingredients have gotten into the water by the water passing through the salts in the

earth. This evidence consists of the testimony of the physician that the actions of the defendants' artificial and complainant's natural water are the same, substantiated by the statements of the chemists that the elements in the artificial will combine similarly in the artificial and in the natural waters.

It is submitted that complainant has failed to prove any fraud in defendants' publishing that their product is an artificial Hunyadi.

Not only has complainant failed to show any fraud upon defendants' part in asserting that their product is an artificial "Hunyadi," but complainant has failed utterly to show that any of the other acts of the defendants have had a tendency to confuse the defendants' goods with those of the complainant, and has failed to show any intention upon the part of the defendants to create such confusion, but on the contrary the evidence shows that the defendants have been most careful to distinguish their goods from those of the complainant. The defendants have clearly evidenced in all their acts their desire to be known as having no connection whatever with the complainant. This could be illustrated in no better manner than by showing the insistent claims of the defendants that they are manufacturers of artificial mineral waters, and that such artificial products are better than the natural mineral waters. The use of the word "artificial" itself suffices to distinguish the defendants from the complainant, for the complainant has always represented her product as a *natural* mineral spring water. The word "natural" appears prominently upon all complainant's labels, catalogues and advertisements. Some of complainant's advertisements appear on pages 169, 170, 171 and 173 of the record. The front of complainant's catalogue appears on page 172. In view of the spirited contest for upwards of one hundred (100) years between the natural spring waters and the artificial waters, the public has become so well educated in the opposing claims of these competitors, that the use of the word "artificial" upon the labels of the defendants would of itself prevent the possibility of confusion of the defendants with the complainant's product. Yet the defendants have used every other means for impressing upon

the public that they are manufacturers of artificial waters, and to distinguish their goods from those of complainant. Defendants' business card, page 193; their billhead, page 194; their statements and their envelopes, page 195; the cover of their catalogue, pages 195 and 212, all contain the word "Artificial Mineral and Table Waters" in bold type, in conjunction with defendants' name and address. In their advertisements, likewise, they give the public distinctly to understand that they are manufacturers of artificial mineral waters. Pages 191 and 192 of the Record:

DEFENDANTS HAVE INSISTED, BEFORE THE PUBLIC IN ALL THEIR LITERATURE AND ADVERTISEMENTS, THAT ARTIFICIAL MINERAL WATERS ARE BETTER THAN THE NATURAL MINERAL WATERS.

On pages 185 through 190 are reproductions of defendants' Catalogue of 1899. Referring to page 187, it will be seen that the statements in the boldest type are those which call attention to the preference which should be given to the artificial waters over the natural, and the reasons for giving the artificial waters that preference. In defendants' Catalogue of 1901 (Record, page 212) the statements concerning the defendants' reasons why the public should prefer the artificial waters are printed in large red type, so that these sentences are the ones which take the eye first upon looking at the catalogue. For instance, looking at page 4 and page 5 of the catalogue, one reads in this red type, before his attention is attracted to anything else, the following sentences:

"Why artificial waters should have the preference over natural waters." "Artificial Mineral Waters, when scientifically prepared, are by far preferable to natural waters." "Natural Waters deteriorate and undergo great changes." "Close examination of bottled natural mineral waters will prove our assertion";

and so forth through pages 6, 7, 8 and 9 of this catalogue the

defendants repeat their arguments for giving preference to the artificial waters. (Note the aforesaid headings which appear in red print in the exhibit, have been printed in black in the Record, thus making them much less prominent in the Record than they are in the catalogue of defendant.)

DEFENDANTS HAVE CALLED ATTENTION TO
THE CLAIM THAT THEIR ARTIFICIAL
WATERS ARE BETTER THAN THE NATURAL,
DISTINCTLY IN THEIR ADVERTISEMENTS OF
THEIR ARTIFICIAL HUNYADI.

Their street car sign (page 249 of the Record) says:

Wagner's Hunyadi Preferable to the Natural, more
Palatable, more Digestible, more Effective."

Page 275 op. 249 of the Record, which is a page of the booklet, an Essay on the Reduction of Obesity, underneath a picture of the siphon containing their Hunyadi, defendants say, "Superior to the Natural." Upon page 44 of the catalogue (page 239 of the Record), in the reading matter referring to "Wagner's Artificial Hunyadi," appears again their claim that their Hunyadi is preferable to the natural waters.

Not only have defendants been most solicitous to have the public understand that they are producers of artificial products, thus to distinguish themselves from the natural springs, but in the present instance, they have adopted bottles which are distinct.

DEFENDANTS HAVE BOTTLED THEIR HUNYADI
IN BOTTLES WHOSE SHAPE IS STRIKINGLY
DIFFERENT FROM THE DISTINCTIVE SHAPE
OF THE COMPLAINANT'S BOTTLE.

The complainant's bottle, adopted in the start of their business and used always by them, is a squat bottle with a short neck, the glass of the bottle being dark green and hardly transparent. (See "Defendants' Exhibit, Complainant's Bottle No.

1" and "Complainant's Bottle No. 2," offered on pages 63 and 72 of the Record, and the report of Saxlehner v. Eisner, 179 U. S., 19.) Whilst defendants' bottles are long bottles with elongated tapering necks. Their pint bottle is made of clear transparent glass. Defendants' half-pint bottle is made of green transparent glass. Complainant does not put a half-pint bottle on the market. Defendants also pack their artificial Hunyadi water in siphons. These siphons are made in the usual form of a siphon bottle and are made of clear glass. Complainant's have not placed and cannot use Hunyadi Janos in a siphon because it is a still water. (See "Defendants' Exhibit, Defendants' Hunyadi Bottle"; Defendants' Exhibit, Split Bottle"; "Defendants' Exhibit, Defendants' Siphon," offered on page 94 of the Record, respectively.) *Anyone who had ever taken complainant's Hunyadi Janos could not be deceived into taking defendants' artificial Hunyadi, therefore, because the former is a still water, and the latter is an effervescent one.*

DEFENDANTS' NAME AND PLACE OF BUSINESS
APPEARS DISTINCTLY UPON THE BOTTLES
CONTAINING THEIR ARTIFICIAL HUNYADI.

Their name and address appear in bold type on their labels and upon their siphon by far the largest lettering is the etching of their name and address in the glass.

DEFENDANTS' LABELS ARE OF A DISTINCTIVE
STYLE AND SHAPE AND BEAR NO RESEM-
BLANCE TO THE WELL-KNOWN STYLE AND
SHAPE OF THE COMPLAINANT'S LABELS.

Complainant's label surrounds the bottle, is in panels, has a medallion and is covered with printed testimonials. Defendants' label covers only part of the bottle, is distinctive in shape, and style of print, and contains no medallions and no testimonials. In fact, the differences are too many to enumerate, and

there are no resemblances. The general appearance of defendants' labels is as widely distinct from complainant's as it could be made, and when upon the bottles form packages which do not bear a scintilla of a suggestion of the appearance of complainant's package, but are as different therefrom as they could be made.

Defendants' labels state clearly that the water is Wagner's artificial Hunyadi, and that it is carbonated. In addition to the above words, on the siphon label the words "in every respect superior to the imported Hunyadi waters" and the words upon the pint and split bottle labels "Superior to the natural waters" and "Prepared from Diamond Distilled Water by W. T. Wagner's Sons," would convey to those of the most meager understanding that the product was an artificial one, and coming from a source having no connection with the source of the natural "Hunyadi." The facts in this case are not similar to the facts in the case of Saxlehner against Thackery, as stated upon page 2 of complainant's Brief. The facts here are, the Wagners have prepared their product from a distilled water following a disclosed formula published by a high authority in such matters; have marked their water "Artificial"; have been scrupulous about calling the attention of the public to the fact that it is artificial; have adopted a bottle distinct in shape from that of the complainant, and have used a label which has an entirely different appearance from that of the complainant. Whereas, in the Thackery case, the defendant Thackery "doctored the waters of Lake Michigan"; did not publish his formula; did not mark his water "Artificial," but adopted a word, "Synthetic," of which the Court said he might as well have used a Greek word, as far as the knowledge of the general public was concerned; called his water "Hunyadi Geyza," which has a foreign sound, and adopted bottles and labels in appearance closely simulating the bottles and labels of the complainant. (Page 153 to 156, Record). Why do complainant's counsel say, upon page 2, that the facts here are similar to the facts in the Thackery case?

The evidence to which complainant's counsel refer as showing unfair competition in trade by defendants is an exhibition

of the weakness of their contention that there has been any such competition. They refer particularly to one of defendants' Price Lists, the one appearing on pages 6 and 7. This Price List discarded in May, 1899, long prior to the bringing of this suit (See page 17 of Record), is one addressed to the wholesale trade, not the general public. This appears from the words at the head of the list, namely, "Wholesale Price List." The wholesale trade being merchants who sell various waters to the general public, would be informed as to the source from which these products came; they would be especially conversant with the fact that W. T. Wagner's Sons were manufacturers of Artificial Mineral Waters.

Upon pages 40 and 41 of their Brief, complainant's counsel have taken excerpts from defendants' catalogue of 1901, but have not made it clear that the quotation on the bottom of page 40 of their Brief is a short description which the defendants have given of the Hunyadi Janos Springs. The plan of this catalogue is: First, to describe briefly the location of the natural springs and the waters thereof, and to follow this with a description of the artificial reproduction made by the defendants. The description of these various mineral springs commence upon page 224, Record, and continues through page 240 thereof. In the first pages of this catalogue defendants have set forth the advantages of the artificial over the natural waters.

Complainant's counsel unable to discover any acts of the defendants which would support the contention that there has been unfair competition in trade in this case, apparently have made a most minute examination into all the acts of the defendants' business, and what have they succeeded in unearthing? Page 39 of complainant's Brief, they state that defendants are selling an artificial water made by them, which is labeled "Natural Seltzers."

Greyer's testimony is,

"X-Q. 170. Have they not and are they not now selling the natural seltzer of the 'Reichs Quellen Gesellschaft' of Wiesbaden, Germany?"

A. They are not selling a natural water at all. They never did. There are stock labels in the market reading, 'Natural Selters,' which are sold to bottlers throughout the country, and upon the request in a few cases, by some customers, who have been getting a water with these labels on them, we have used such labels to fill their wants, but we have never sold them as a natural selter.

X-Q. 171. But you have put up an artificial water on which you have put labels bearing the inscription, 'Reichs Quellen Gesellschaft,' Natural Selter, Wiesbaden, have you not?

A. We have under the conditions stated, but do not advertise such a water, nor have we that on any of our Price Lists, and the labels have never been printed by us."

The aforesaid few customers of defendants who requested the label, "Natural Selter" to be put upon the bottles were not deceived by the defendants, as to the source from which this selter came. This matter is something entirely foreign to the issues in this case.

Defendants' former use of "Hunyadi Janos" discontinued prior to bringing of suit (page 17) was not fraudulent. They knew of Enno Sander's continuous use of the term "Hunyadi Janos" upon an artificial product for thirty years preceding their use thereof, and knew of druggists making their own "Hunyadi Janos"; moreover defendants used the word artificial with said term, used distinctly different bottles and labels, and were careful in other respects to prevent their goods being confused with those of the complainant.

In the face of the showing of defendants' more than forty years of business as manufacturers of mineral waters; of their persistent efforts to make sure that the public should connect their name with artificial waters and to recognize the claim, in which they took a pride, viz., that artificial waters are preferable to the natural; of their evident intention to distinguish their bottles and labels from those of the complainant, and

of their clear marking of their "Hunyadi" as artificial, it is folly to assert that defendants have tried to make the public believe that their "Hunyadi" is a natural "Hunyadi," or that it is that of the complainant. The Circuit Court and the Circuit Court of Appeals of the Sixth Circuit were right in finding that the facts here do not establish a case of unfair competition. (Pages 157 and 251, the latter appearing at end of the Record.)

AUTHORITIES.

Complainant has lost the title to the word "Hunyadi" as a trade-mark.

Saxlehner v. Eisner & Mendelson Co., 179 U. S., 45;

La Republic Francaise v. Saratoga Vichy Springs Co., 191 U. S., 426;

Benj. Moore & Co., v. Auwell, 172 Fed., 508 through 513.

The failure of this Court to grant an injunction against the use of the term "Hunyadi" in the case of Saxlehner v. Mendelson Co., *super*, indicates that the title of the complainant therein has been lost.

Menendez v. Holt, 128 U. S., 514-523.

In the absence of fraud, neglect of the owner to sue infringers of a trade-mark, continued for a long period of time, will cause the mark to become public property.

Coats v. Thread Co., 149 U. S., 562;

Virginia Hot Springs Company v. Hageman & Company, 138 Fed., 855;

La Republic Francaise v. Schultz, 102 Fed., 154;

Ford v. Foster, L. R. 7 C. H., 628;

Rowland v. Michell, 13 R. P. C., 457, and 14 R. P. C. 37;

Ripley v. Bandey, 14 R. P. C., 591;

Hyde & Company's trade-mark, 7 C. D., 724;

Sebastian on trade-mark, 4th edition, page 202;

Manufacturing Company v. Williams, 68 Fed., 489;

New York Grape Sugar Company v. Buffalo Grape Sugar Co., 18 Fed., 638; 24 Fed 604-606

Wyeth v. Stone, Fed. Cas., 18107.

Analogous cases are found in reports referring to patent rights.

Woodmansee & Hewitt Company v. Williams, 68 Fed., 489;

Leggett v. The Standard Oil Company, 149 U. S., 285. 287

A trade-mark cannot be held in common by various competitors.

Delaware & H. Canal Company v. Clark, 13 Wall, 311-328;
Columbia Mill Company v. Alcorn, 150 U. S., 460-463;
Lawrence Mfg. Co. v. Tenn. Mfg. Co., 138 U. S., 537-549.

In the absence of a technical trade-mark, it is incumbent upon the complainant to show fraud practiced by the defendants upon the complainants in order to make out a case of unfair competition in trade.

Delaware & H. Canal Company v. Clark, 13 Wall, 311;
Lawrence Mfg. Co. v. Tenn. Mfg. Co., 138 U. S., 537;
Coats v. American Thread Company, 149 U. S., 562;
Singer Mfg. Company v. June, 163 U. S., 169;
National Elgin Watch Case Company v. Illinois Watch Case Company, 179 U. S., 665;
French Republic v. Saratoga Vichy, ¹⁹¹149 U. S., 427;
Howe Scale Company v. Wyckoff, Seamans & Company, 198 U. S., 118;
Von Faber-Castell v. Faber, 139 Fed., 257 (C. C. A. of 2d. Petition for Writ of Certiorari denied Dec. 4, 1905);
La Republic Francaise et al v. Schultz, 94 Fed., 100;
Lare v. Harper & Bros., 86 Fed., 481; 30 C. C. A., 373;
Lamont, Corliss & Co. v. Hershey, 140 Fed., 763;
American Brewing Co. v. Bienville Brewery, 153 Fed., 615-619.

Deception of the public as to the ingredients of an article of merchandise is not in itself unfair competition in trade, and in the absence of legislation is not actionable at the suit of a private individual or a group of such individuals.

American Washboard Company v. Saginaw Mfg. Co., 103 Fed. Rep., 281;
New York and R. Cement Company v. Coplay Cement Co., 44 Fed., 277;
Worden & Company v. California Fig Syrup Company, 187 U. S., 517 through 527.

CONCLUSION.

It is submitted that the defendants have not been guilty of any unfair competition in trade; that complainant is not entitled to an injunction against the use made of the word "Hunyadi" upon an artificial product by the defendants, and, since the Circuit Court of Appeals found the appellant entitled to the use as a trade-mark of the words "Hunyadi Janos," that complainant should bear the entire costs of this appeal.

Respectfully submitted,

WALTER F. MURRAY,

Counsel for Appellees.

THE facts, which involve the right of the owners of the Hunyadi Janos Springs to enjoin the sale of artificial Hunyadi water, are stated in the opinion.

Mr. Antonio Knauth and Mr. John G. Johnson for petitioner:

Petitioner has always been solicitous in suppressing the use of the Hunyadi name on any artificial products. See *Hunyadi Case*, 179 U. S. 19; *Flower Mills Co. v. Eagle*, 86 Fed. Rep. 608; *Thackeray v. Saxlehner*, 125 Fed. Rep. 911.

Appellees' manufactured product is not artificial Hunyadi water. See work of Count Maillard de Marafy, cited in *Singer Mfg. Co. v. June Co.*, 163 U. S. 169, 199.

Appellees' labels and advertisements are untruthful and designed to reap the benefits of complainant's reputation; if the word Hunyadi shall be allowed to the defendants, the door will be opened to wholesale fraud.

The name of a spring and the water bottled therefrom is protected, according to principles applied to trade-marks in general. *Congress Spring Co. v. High Rock Congress Spring Co.*, 45 N. Y. 291; *Apollinaris Co. v. Scherer*, 27 Fed. Rep. 18; *Hill v. Lockwood*, 32 Fed. Rep. 389; *Dunbar v. Glenn*, 42 Wisconsin, 118; *Carlsbad v. Thackeray*, 57 Fed. Rep. 18; *Northcutt v. Turney* (Ky.), 41 S. W. Rep. 21; *Hunyadi Cases*, 179 U. S. 19.

Such names, as can be properly called geographical names, can only be legally used by those whose products come from the geographical region in question. *Newman v. Alford*, 51 N. Y. 189; *A. F. Pike Mfg. Co. v. Cleveland Stone Co.*, 35 Fed. Rep. 896; *Pillsbury v. Eagle*, 86 Fed. Rep. 608; *Anheuser v. Miller*, 87 Fed. Rep. 864; *California Fruit Cannery Assn. v. Myer*, 104 Fed. Rep. 82; *Am. Watch Co. v. U. S. Watch Co.*, 173 Massachusetts, 85; *Morgan Envelope Co. v. Walton*, 82 Fed. Rep. 469; *Key West Cigar Assn. v. Rosenbloom*, 171 Fed. Rep. 296; *Siebert v. Gandolfi* (C. C. A.), 149 Fed. Rep. 100.

A proprietary interest in the terms or symbols used is not

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Argument for Petitioner.

essential to the maintenance of any suit to enjoin the misuse of these terms or symbols. An interest in the good-will of the business or any other property threatened by such misuse is sufficient to entitle the plaintiff to an injunction. *Cohen v. Nagle*, 76 N. E. Rep. 276, 279; *Scriven v. North*, 134 Fed. Rep. 366, 376; *Collinsplatt v. Findlayson*, 88 Fed. Rep. 693; *Draper v. Skerrett*, 116 Fed. Rep. 206; *Shaver v. Heller*, 108 Fed. Rep. 821, 832; *Manitowoc v. Wm. Numsen*, 93 Fed. Rep. 196.

It is no defense that the full name "Hunyadi Janos" was dropped from the defendants' labels before the bringing of the suit. *Saxlehner v. Eisner*, 147 Fed. Rep. 189; *India Rubber Co. v. Rubber Comb Co.*, 45 N. Y. Super. Ct. 258; *Low v. Hart*, 90 N. Y. 457; *Plant Co. v. May Mercantile Co.*, 153 Fed. Rep. 229; *Hutchinson v. Blumberg*, 51 Fed. Rep. 829.

Even if appellees may use the word "Hunyadi" with proper correctives and explanatives, sufficient care has not been taken to distinguish. "Hunyadi" is emphasized. "Wagner" and "Artificial" are inconspicuous on the label and in advertising. Both are omitted in the price list. The distinctions are insufficient. *Fuller v. Huff*, 104 Fed. Rep. 111; *Hansen v. Siegel Cooper Co.*, 106 Fed. Rep. 691, 692; *Menendez v. Holt*, 128 U. S. 514, 521; *Shaver v. Heller*, 108 Fed. Rep. 821, 833; *Carlsbad v. Schultz*, 78 Fed. Rep. 469; *Baker v. Slack*, 130 Fed. Rep. 514.

That others have infringed is no defense. *Singer Mfg. Co. v. June Mfg. Co.*, 163 U. S. 169; *Taylor v. Carpenter*, 3 Story, 458; and see 2 Wood & M. 21.

The fact, even if proven, that the artificial product of appellees is better than the genuine natural water is no justification for calling it spurious "Hunyadi." The public is entitled to the very thing it expects and cannot be deceived even for its own benefit. *Singer Co. v. Loog*, 8 App. Cas. 29; *Coats v. Holbrook*, 2 Sand. Chan. 586; *Pillsbury v. Pillsbury Co.*, 64 Fed. Rep. 841; *McLean v. Fleming*, 96 U. S. 245, 252; *Cleveland Stone Co. v. Wallace*, 52 Fed. Rep. 431.

Where a manifest liability to deception exists in defend-

ant's use of plaintiff's trade name, even though there be no strict trade-mark right involved therein, it is not necessary to bring proof of an actual deception. *Manufacturing Co. v. Trainer*, 101 U. S. 51; *Taendsticksfabriks v. Myers*, 139 N. Y. 364; *Fuller v. Huff*, 104 Fed. Rep. 141; *City of Carlsbad v. Kutnow*, 71 Fed. Rep. 167; *Biscuit Co. v. Baker*, 95 Fed. Rep. 135; *Lee v. Haley*, 5 Chan. App. 155; *North Cheshire &c. Brewing Co. v. Manchester Brewery Co.* (1889), App. Cas. 83; *Am. Waltham Watch Co. v. U. S. Watch Co.*, 173 Massachusetts, 85; *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S. 537; *Coats v. Merrick Thread Co.*, 149 U. S. 562, and *Elgin Nat. Watch Co. v. Illinois Watch Co.*, 179 U. S. 665, do not militate against this rule, nor is the law established in this country different from that applied in England on this point.

Mr. Walter F. Murray for respondents:

This court in the case of *Saxlehner v. Eisner & Mendelson Co.*, 179 U. S. 19, 38, decided that the complainant has lost her title to the word "Hunyadi" as a trade-mark. *Menendez v. Holt*, 128 U. S. 514; *Saxlehner v. Nielsen*, 179 U. S. 45; *La Republic Française v. Saratoga Vichy Springs*, 191 U. S. 426; *Moore v. Auwell*, 172 Fed. Rep. 508, 513.

Where the alleged infringers of a trade-mark have been using it under a show of right, or in the absence of fraud, neglect of the owner of the right to pursue the infringers, if continued for a long period of time will cause the mark to become public property. This will be the case, especially where the infringers are numerous. *Virginia Hot Springs v. Hageman & Co.*, 138 Fed. Rep. 855; S. C., aff'd 144 Fed. Rep. 1023; *La République Française v. Schultz*, 102 Fed. Rep. 154; *Ford v. Foster*, L. R. 7 Ch. 628; *Rowland v. Michell*, 13 R. P. C. 457; S. C., 14 R. P. C. 37; *Ripley v. Baudey*, 14 R. P. C. 591; *Hyle & Co.'s Trade-mark*, 7 C. D. 724; *Sebastian on Trade-Marks*, 4th ed., 202; *Manufacturing Co. v. Williams*, 68 Fed. Rep. 489; *N. Y. Grape Sugar Co. v. Buffalo Grape Sugar Co.*, 18 Fed. Rep. 638; *Wyeth v. Stone*, Fed. Cas. No. 18,107;

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Coats v. Thread Co., 149 U. S. 562. Analogous cases are found in reports referring to patent rights. *Woodmansee & Hewitt Co. v. Williams*, 68 Fed. Rep. 489; *Leggett v. The Standard Oil Co.*, 149 U. S. 285.

A trade-mark in "Hunyadi" could not be held in common by various owners of Hungarian springs, the waters of which were sold competitively in the United States. *Del. & H. Canal Co. v. Clark*, 13 Wall. 311, 328; *Columbia Mill Co. v. Alcorn*, 150 U. S. 460, 463; *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S. 537, 549.

It is incumbent upon complainant to show that defendants have sold their products as that of the complainant. Cases *supra* and *Canal Co. v. Clark*, 13 Wall. 311; *Lawrence Mfg. Co. v. Tennessee Mfg. Co.*, 138 U. S. 537; *Coats v. Am. Thread Co.*, 149 U. S. 562; *Nat. Elgin Watch Co. v. Ill. Watch Co.*, 179 U. S. 665; *French Republic v. Saratoga Vichy*, 191 U. S. 427; *Howe Scale Co. v. Wyckoff, Seamans & Co.*, 198 U. S. 118; *La Republique Française v. Schultz*, 94 Fed. Rep. 500.

Deception of the public, as to the ingredients of an article of merchandise, is not unfair competition in trade, and is not actionable at the suit of a private individual or group of such individuals, in the absence of legislation. *American Washboard Co. v. Saginaw Mfg. Co.*, 103 Fed. Rep. 281; *New York & R. Cement Co. v. Coplay Cement Co.*, 44 Fed. Rep. 277; *Worden & Co. v. California Fig Syrup Co.*, 187 U. S. 517, 527.

Defendants have not deceived the public about the ingredients of their artificial "Hunyadi."

Defendants have insisted, before the public in all their literature and advertisements, that artificial mineral waters are better than the natural mineral waters.

MR. JUSTICE HOLMES delivered the opinion of the court.

The petitioner is the owner of wells in Budapest from which comes the water known throughout the world by the arbitrary name Hunyadi Janos given to it by her husband. The

respondents make a bitter water in Cincinnati and label it "W. T. Wagner's Sons Carbonated Artificial Hunyadi Conforming to Fresenius Analysis of Hunyadi Janos Springs." Formerly they for a time labeled it "W. T. Wagner's Sons Artificial Hunyadi Janos. Ofen Bitter Water. Highly Aerated," but this label had been given up before the bill was brought. The petitioner seeks an injunction against the use of either 'Hunyadi Janos' or 'Hunyadi' on any water not coming from her wells. The Circuit Court of Appeals for the Seventh Circuit in a more or less similar case granted an injunction against the use of the word Hunyadi. *Thackeray v. Saxlehner*, 125 Fed. Rep. 911; S. C., 60 C. C. A. 562. In the present suit the Circuit Court and the Circuit Court of Appeals, treating the right of the petitioners to 'Hunyadi Janos' as admitted, refused an injunction against the use of 'Hunyadi,' and finding that no unfair competition was shown dismissed the bill. 157 Fed. Rep. 745; S. C., 85 C. C. A. 321. A writ of certiorari was allowed by this court.

We see no reason for disturbing the finding of the courts below that there was no unfair competition and no fraud. The real intent of the plaintiff's bill, it seems to us, is to extend the monopoly of such trade-mark or trade name as she may have to a monopoly of her type of bitter water, by preventing manufacturers from telling the public in a way that will be understood what they are copying and trying to sell. But the plaintiff has no patent for the water, and the defendants have a right to reproduce it as nearly as they can. They have a right to tell the public what they are doing and to get whatever share they can in the popularity of the water by advertising that they are trying to make the same article and think that they succeed. If they do not convey, but, on the contrary, exclude the notion that they are selling the plaintiff's goods, it is a strong proposition that when the article has a well-known name they have not the right to explain by that name what they imitate. By doing so they are not trying to get the good will of the name, but the good

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will of the goods. See *Flagg Manufacturing Co. v. Holway*, 178 Massachusetts, 83, 91; *Chadwick v. Corell*, 151 Massachusetts, 190, 191. Although the application is different, the principle seems to be similar to the rule that when a patent has expired descriptive words or even an arbitrary or personal name by which it has become known may be used if sufficient precautions are taken to prevent the public from being deceived. See *Singer Manufacturing Co. v. June Manufacturing Co.*, 163 U. S. 169.

The plaintiff says that no one can succeed in imitating a natural water. But all are free to try. In the absence of some fraud injurious to the plaintiff, it would be going far under any circumstances to allow her to prevent advertising "Artificial Hunyadi." But it is enough to say that under the decision in *Saxlehner v. Eisner & Mendelson Co.*, 179 U. S. 19, 36, the defendants may do so in this case. In that decision it was said that 'Hunyadi,' as applied to similar water, had been public property in Hungary, and therefore had become so here, and that a later change there would not work a corresponding change in the United States. 'The right to individual appropriation once lost is gone forever.' See also *French Republic v. Saratoga Vichy Co.*, 191 U. S. 427, 437. At the very least the family name has become the name for any natural water of a certain type coming from a more or less extensive district, if not from anywhere in Hungary. It does not belong to the plaintiff alone in this country, even if she is the only one now sending the water here. But if there is any well-founded doubt as to the right to use a personal trade name with proper guards against deception to signify what one is imitating where one has the right to imitate, there can be none that one is at liberty to refer to a geographical expression to signify the source of one's model. 'Hunyadi' at best is now only a geographical expression in effect.

Decree affirmed.

SAXLEHNER *v.* WAGNER.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH
CIRCUIT.

No. 81. Argued January 17, 1910.—Decided February 21, 1910.

The right to individual appropriation once lost is gone forever.

Where a geographic or family name becomes the name for a natural water coming from a more or less extensive district, all are free to try to imitate it, and the owners of one of such natural springs cannot prevent the sale of an artificial water as being similar to that of the natural spring, where there is no attempt to deceive the public as to its being artificial.

Hunyadi is now in effect a geographical expression and the owners of the Hunyadi Janos Springs cannot prevent the sale of artificial Hunyadi water where there is no deception of the public as to its being an imitation.

157 Fed. Rep. 745, affirmed.